

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

PNC Investments, LLC
PNC Capital Markets LLC

Hearing Site: Cincinnati, Ohio

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Owen Harnett Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondents PNC Investments, LLC ("Respondent"): Raymond M. Ripple, Esq., Littler Mendelson, P.C., Providence, Rhode Island.

PNC Capital Markets LLC did not appear.

CASE INFORMATION

Statement of Claim filed on or about: July 24, 2017.

Amended Statement of Claim filed on or about: November 10, 2017.

Claimant signed the Submission Agreement: July 24, 2017.

Answer to the Amended Statement of Claim filed by Respondent on or about: December 6, 2017.

Respondent signed the Submission Agreement: December 6, 2017.

PNC Capital Markets LLC did not file a Statement of Answer.

PNC Capital Markets LLC did not sign the Submission Agreement.

CASE SUMMARY

In the Amended Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint ("Underlying Complaint"), occurrence number ██████████, from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent did not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested an award of \$1.00 in compensatory damages; other appropriate relief; and expungement of all references to the Underlying Complaint from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for \$1.00 in damages and award no other relief against Respondent.

On the record at the hearing, Claimant withdrew his claim for compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On or about November 7, 2017, Respondent's counsel filed a Notice of Appearance and Request for an Extension of Time, in which he appeared on behalf of PNC Investments, LLC, which he asserted was improperly identified as PNC Capital Markets LLC in the Statement of Claim.

On or about November 10, 2017, Claimant filed an Amended Statement of Claim. In the Amended Statement of Claim, Claimant substituted PNC Investments, LLC as the respondent, asserting the same causes of action as in the (original) Statement of Claim. Accordingly, the Arbitrator determined that PNC Investments, LLC is the respondent in this case and Claimant did not pursue any claims against PNC Capital Markets LLC.

The Arbitrator found that service was perfected on the customer in the Underlying Complaint ("Customer") at her most recent place of residence by certified mail of both the Statement of Claim and the Amended Statement of Claim with exhibits on July 31, 2017, and February 16, 2018, respectively, together with cover letters of explanation. The Arbitrator found that service was supported by an Affidavit of Service by Claimant's counsel. The mailings were not returned by the postal service.

The Arbitrator conducted a recorded telephonic hearing on March 29, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing and did not contest the request for expungement. The Customer did not participate in the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed the settlement documents in the Underlying Complaint, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator found that the settlement was not conditioned on the Customer not opposing the request for expungement. The Arbitrator also found that Claimant did not contribute to the settlement amount and was not aware of the settlement as it was between Respondent and the Customer.

The Arbitrator found that Claimant did not previously file a request for expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Claimant's testimony at the March 29, 2018 expungement hearing.
- The Statement of Claim.
- The Amended Statement of Claim with attachments:
 - Ex. 1 — Claimant's BrokerCheck® Report and CRD Individual Snapshot Report, dated November 10, 2017.
 - Ex. 2 — PNC Brokerage letter to EAH re: PNC Brokerage Corp. Accounts for the Customer's Complaint, dated October 3, 1997.
 - Ex. 3 — "The Great Bond Massacre" Fortune article, dated 1994.
 - Ex. 4 — EAH letter to PNC Securities Corp. re: the Customer's accounts, dated August 14, 1997.
 - Ex. 5 — Release and Undertakings Agreement between Customer and PNC Securities Corp. and Claimant, dated July 26, 2000 ("Settlement Agreement").
- Claimant's Submission Agreement dated July 24, 2017.
- Notice of Appearance and Request for Extension of Time filed by Respondent, dated November 7, 2017.
- Statement of Answer to Amended Statement of Claim filed by Respondent, dated December 6, 2017.
- Submission Agreement signed by Respondent, dated December 6, 2017.
- Affidavit of Service of Attorney Dochter Kennedy, dated February 22, 2018.
- Service Letter to the Customer, dated February 16, 2018, and Service Letter to the Customer dated July 31, 2017.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the Arbitrator has decided in full and final resolution issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to the Underlying Complaint, occurrence number [REDACTED] from registration records maintained by the CRD for Claimant [REDACTED] (CRD # [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation or information is factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

After considering the oral argument, Claimant's testimony and the Exhibits mentioned above, the Arbitrator determined that the claim, allegation or information showing on his registration records maintained by the CRD alleged against Claimant was erroneous and/or impossible.

The Customer made a claim against Claimant and Respondent in the claim letter dated August 14, 1997, in which Customer alleged:

- excessive trading
- excessive trading costs
- failure to disclose or misrepresentation of compensation
- indeterminate breaches of trust

Claimant testified that he met with the Customer constantly, at least monthly on a personal level and formally on a professional level more times than most of his other customers. At those times, the Customer's accounts and performance and strategy of the accounts were discussed. Claimant had monitored risk, performance and market conditions with the Customer, paying particular attention to the bond market in 1994. (Amended Statement of Claim Ex. 3) Claimant made adjustments to the accounts in order to protect the capital in accord with the Customer's expressly stated goals, which resulted in modified returns as was repeatedly explained to the Customer. Claimant received compensation from the Customer's accounts that was appropriate as to amount and only on new invested funds when invested. The conduct of Claimant with the Customer's accounts is supported by the October 3, 1997, findings by Respondent's internal investigation. (Amended Statement of Claim Ex. 2).

The Settlement Agreement in the Underlying Complaint was a reasonable amount in consideration of Respondent's litigation costs and a reasonable payment to avoid further time and expense. The amount was divided equally to each customer therein for damages and attorneys' fees. The parties in the Underlying Complaint agreed the claims were vigorously denied and disputed and that Claimant and Respondent expressly denied any liability or impropriety. Further, the Customer agreed to withdraw claims of wrongdoing by Claimant and Respondent in the Underlying Claim. (Amended Statement of Claim Ex. 5¶ 7)

Claimant argued that the allegations were false at the hearing on the merits, but not in the Statement of Claim, therefore, the Arbitrator did not make a finding on this argument.

2. Any and all claims for relief not specifically addressed herein are denied.

ARBITRATOR

Gregory P. Szuter

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

/s/ Gregory P. Szuter

Gregory P. Szuter
Sole Public Arbitrator

April 25, 2018

Signature Date

April 25, 2018

Date of Service (For FINRA Office of Dispute Resolution office use only)

ARBITRATOR

Gregory P. Szuter

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

April 25, 2018

Gregory P. Szuter
Sole Public Arbitrator

Signature Date

Date of Service (For FINRA Office of Dispute Resolution office use only)