

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Eric Litow, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: Randi Perry Spallina, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: September 21, 2017.

████████████████████ signed the Submission Agreement: September 21, 2017.

Statement of Answer filed by Respondent on or about: November 22, 2017.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: November 22, 2017.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the cause of action of inaccurate reporting on her Central Registration Depository ("CRD") records. The cause of action relates to a previously filed customer arbitration claim (NASD Arbitration Case No. ██████████/Occurrence No. ██████████) that was recorded by Respondent on Claimant's CRD records.

In the Statement of Answer, Respondent took no position as to Claimant's expungement request and objected to Claimant's request for \$1.00 in compensatory damages.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested that all references to the customer complaint (Occurrence No. ██████████) be expunged from her CRD records; an award of

compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deemed just and proper.

In the Statement of Answer, Respondent requested that Claimant's request for damages in the amount of \$1.00 be denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about January 18, 2018, the Arbitrator ordered Claimant to provide evidence that the underlying customer was notified of the claim for expungement. On or about March 16, 2018, Claimant provided notice to the underlying customer of the date and time of the expungement hearing and of the customers' right to participate therein. Additionally, Claimant filed with FINRA Office of Dispute Resolution a signed affidavit of service of the Statement of Claim on the underlying customer.

The Arbitrator conducted a recorded telephonic hearing on April 12, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. At the hearing, Claimant withdrew her request for compensatory damages against Respondent. Respondent did participate in the expungement hearing and did not contest the request for expungement. The underlying customer did not contest the request for expungement and did not appear at the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to the underlying customer, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement and that Claimant did not contribute to the settlement amount.

The Arbitrator also noted that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; the testimony presented at the expungement hearing; information related to the Settlement Agreement between the customer and Respondent; and notice to the customer regarding the expungement hearing and proof of service of notice of the expungement hearing, along with the affidavit of Claimant's counsel providing proof of service on the customer.

### **AWARD**

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

1. The Arbitrator recommends the expungement of all references to Occurrence No. [REDACTED] from registration records maintained by the CRD, for Claimant (CRD#

[REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion funds; and

The claim, allegation, or information is false.

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

The Arbitrator found that, based on the evidence and testimony presented at the expungement hearing, Claimant was not involved with the misappropriation of funds that was the subject of the underlying Statement of Claim filed by the customer.

The documentary evidence indicated that, in prior court actions and depositions, the CEO and President of the customer testified under oath that Claimant was not involved in the misappropriation of funds. Respondent also conducted an internal investigation of Claimant and did not find any evidence that Claimant was involved in the misappropriation of funds. In addition, Respondent, in its Answer to the expungement claim, stated that it "takes no position" as to the request for expungement.

The Settlement Agreement in the underlying arbitration proceeding was reviewed and it reflected a payment by Respondent. The Arbitrator considered the amount of the settlement to be nominal. Claimant and Respondent denied any wrongdoing in the Settlement Agreement and Respondent stated that it opted to settle in the arbitration to avoid the cost of litigation. Claimant did not contribute to the settlement.

The BrokerCheck report of Claimant did not have any other disclosure events except for a mortgage foreclosure action filed against Claimant and her spouse. The parties to the action came to a compromise and Claimant and her spouse entered into a Settlement Agreement with the mortgagor.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 50.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$150.00

**Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session = \$ 50.00  
Pre-hearing conference: January 18, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: April 12, 2018 1 session

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Total Hearing Session Fees = \$100.00

The Arbitrator has assessed the total hearing sessions fees of \$100.00 to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

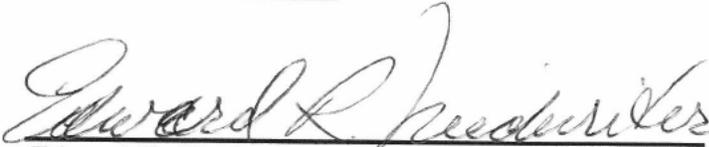
Edward R. Niederriter

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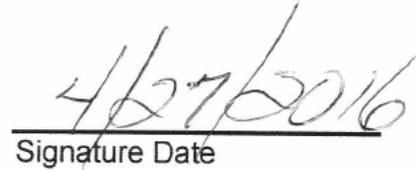
Sole Public Arbitrator

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**



Edward R. Niederriter  
Sole Public Arbitrator



Signature Date

April 30, 2018

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