

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

First Heartland Capital, Inc.

Hearing Site: Detroit, Michigan

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant” or “██████████”): Owen Harnett, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent First Heartland Capital, Inc. (“Respondent”): Jeanne Jehle, Esq., First Heartland Capital, Inc., Lake St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: July 25, 2017.

Claimant signed the Submission Agreement: July 25, 2017.

Statement of Answer filed on or about: October 19, 2017.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of three customer complaints (“Underlying Complaints”), Occurrence Numbers ██████████, ██████████, and ██████████, from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, while Respondent objected to and specifically denied certain statements made by Claimant with respect to Respondent’s policies and practices, Respondent respectfully does not object to Claimant’s requests for expungement from his CRD record.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

Compensatory Damages	\$1.00
Other Monetary Relief	Unspecified
Other Non-Monetary Relief	Expungement

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

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement, but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On or about August 2, 2017, Claimant filed notice advising that a copy of the Statement of Claim was served on the customers in the Underlying Complaints.

On or about January 25, 2018, Claimant filed notice advising that the date and time of the expungement hearing, as well as, the opportunity to participate in the hearing, were served on the customers in the Underlying Complaints.

On or about January 30, 2018, Claimant filed an Affidavit of Service signed by Claimant’s counsel advising that the Initial Pre-Hearing Conference Scheduling Order and Respondent’s Statement of Answer were served on the customers in the Underlying Complaints.

The Arbitrator conducted a recorded, telephonic hearing on April 9, 2018, for the presentation of testimony and evidence on [REDACTED] request for expungement. Respondent did participate in the expungement hearing and did not contest the request for expungement.

On the record at the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the requests for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amounts.

The customers in the Underlying Complaints for Occurrence Numbers [REDACTED] and [REDACTED] each executed a Full and Final Release. The issuer of the Real Estate Investment Trust (“REIT”) agreed to reverse the purchases and refund the customers’ initial investments less dividends already received. The customer in the Underlying Complaint for Occurrence Number [REDACTED] transferred away her account and did not take any further action after filing the complaint.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: account documents, investment documents, internal file notes of Claimant, FINRA Rule 2080, correspondence to and from the customers in the Underlying Complaints, and correspondence to and from investigators and First Heartland Capital, Inc.

### AWARD

After considering the pleadings, the testimony and evidence presented at the 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 Occurrence Numbers [REDACTED] and [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.

#### Occurrence Number [REDACTED]

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is false.

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

The customer claimed unsuitability. Her initial information provided to [REDACTED] suggested she met the net worth/liquid net worth requirements for the REIT investment. She later altered her information she previously provided when she asked to reverse the purchase, which was accomplished at no expense to her. Also, her investment objectives and desire for a steady income stream were met with the investment in the REIT, so her claim of unsuitability based on what information she provided to [REDACTED] was inaccurate.

#### Occurrence Number [REDACTED]:

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is false.

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

The customer claimed inadequate disclosure, but she was provided the required documentation for the investment and acknowledged same on several signed documents associated with the investment. She held the investment for several months, including at the time she wrote to raise questions about the purchase several months before. She did not ask [REDACTED] to sell the investment and she received the anticipated revenue stream and ongoing information from the investment as well as from [REDACTED] for the months she did hold the REIT. Her claim of inadequate disclosure was inaccurate.

2. Claimant [REDACTED] request for expungement for Occurrence Number 1527199 is denied.
3. Other than forum fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
4. Any and all claims for relief not specifically addressed herein are denied.

### **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
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*\*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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, First Heartland Capital, Inc. is assessed the following:

Member Surcharge	=\$ 150.00
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#### **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 4, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: April 9, 2018 1 session	
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Total Hearing Session Fees	= \$ 100.00

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

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

**ARBITRATOR**

Tracy L. Allen

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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**

Tracy L. Allen  

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Tracy L. Allen  
Sole Public Arbitrator

May 12, 2018  

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Signature Date

May 12, 2018  

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

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: April 9, 2018 1 session	
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All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

Tracy L. Allen

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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**

Tracy L. Allen

May 12, 2018

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Tracy L. Allen  
Sole Public Arbitrator

\_\_\_\_\_  
Signature Date

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