

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Washington, D.C.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Armin Sarabi, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Kathryn D. Perrault, Esq., Bressler, Amery and Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 3, 2017.

Claimant signed the Submission Agreement: May 3, 2017.

Statement of Answer filed by Respondent on or about: June 30, 2017.

Respondent signed the Submission Agreement: July 6, 2017.

Submission of Proof of Service to Customers filed by Claimant on or about: April 12, 2018.

CASE SUMMARY

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two previously filed customer complaints (Occurrence Number ██████████ and Occurrence Number ██████████) wherein Claimant was the financial advisor for the customers who filed the respective complaints ("the underlying customers"). These two Occurrence Numbers were recorded by Respondent on Claimant's CRD records.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers [REDACTED] and [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(A) as the claims, allegations or information were factually impossible or clearly erroneous; expungement of Occurrence Numbers [REDACTED] and [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claims, allegations or information were false; compensatory damages in the amount of \$1.00; and any and all other relief the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent objected to Claimant's claim for compensatory damages and indicated that it did not take a position with respect to the allegations contained in the Statement of Claim.

At the evidentiary hearing, Claimant withdrew his request for \$1.00 in 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 March 21, 2018, Claimant sent notice of the expungement hearing to the customers from the underlying complaints in addition to advising them of their opportunity to advise the parties and Arbitrator of their position on Claimant's expungement request and their opportunity to appear at the in-person hearing.

The Arbitrator conducted a recorded in-person hearing on April 12, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. The customers from the underlying complaints did not participate in the expungement hearing and did not contest the requests for expungement. Respondent appeared telephonically at the expungement hearing and did not oppose the request for expungement.

After the recorded April 12, 2018 hearing, Claimant filed a Submission of Proof of Service to Customers in which he provided exhibits showing his attempts at serving the customers from the underlying complaints with notice of the hearing.

The complaint regarding Occurrence Number [REDACTED] did not result in a settlement. Therefore, there was no settlement for the Arbitrator to review.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement with respect to Occurrence Number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: correspondence between the petitioner for expungement and the customer from Occurrence Number [REDACTED] and the customer's advisor (her accountant).

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded, in-person hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of Occurrence Number [REDACTED] is hereby denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from registration records maintained by the CRD for Claimant Leventhal (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 12805 of the Code of Arbitration Procedure (the "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:

The customer's complaint was that "an outside managed account should not have been recommended to her." The complaint was received by the firm on August 8, 2001.

The Arbitrator believes and finds that this complaint is clearly erroneous. Given the age of the complaint, original records of transactions and contracts were not available; however, Claimant (an associated person) produced some correspondence between himself and the customer and her then-advisor (her accountant) that supported his testimony.

The underlying customer's main concern was income and it was clear that her rather complex portfolio of municipal bonds, when under control of outside specialists with discretionary trading powers in such bonds, produced and was destined to produce in the future higher income than if she managed the portfolio. The customer also expressed unhappiness that she was not in control of the account, but it was clear that she was aware of how such accounts worked, both by the explanation given her by Claimant and also because the customer had some two years of experience with outside management of another account she owned.

3. Any and all other relief requested is hereby 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(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
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Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

March 26 – 27, postponement by Claimant	WAIVED
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Total Postponement Fees	WAIVED
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The Panel waived the adjournment fee.

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: August 28, 2017	1 session

Two (2) hearing sessions on expungement request @ \$50.00/session	=\$ 100.00
Hearing Date: April 12, 2018	2 sessions

Total Hearing Session Fees	=\$ 150.00
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The Arbitrator has assessed the entire \$150.00 of hearing session fees to Claimant.

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

ARBITRATOR

Edward M. Statland

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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/ Edward M. Statland

May 22, 2018

Edward M. Statland
Sole Public Arbitrator

Signature Date

May 22, 2018

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