

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number

[REDACTED]

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Washington, D.C.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED]: Michael Bessette, J.D., AdvisorLaw LLC,
Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Sarah K. Yates, Esq.,
Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: October 13, 2017.

[REDACTED] signed the Submission Agreement: October 13, 2017.

Statement of Answer filed by Respondent on or about: December 8, 2017.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement:
December 8, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: expungement of occurrence numbers
[REDACTED], [REDACTED] and [REDACTED] from his CRD records.

Respondent asserted that the sales practice complaints at issue were properly reported
pursuant to FINRA reporting rules.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of
\$1.00, expungement of occurrence numbers [REDACTED], [REDACTED] and [REDACTED] from his
CRD records, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent took no position with Claimant's request for expungement. Respondent objected to Claimant's request for compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated April 20, 2018, Claimant withdrew his request for expungement of occurrence number [REDACTED]

The Arbitrator conducted a recorded telephonic hearing on May 16, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

The customers in the underlying claims referenced in occurrence numbers [REDACTED] and [REDACTED] did not participate in the expungement hearing. The Arbitrator determined that the customers received a copy of the Statement of Claim and received due notice of the expungement hearing and that the hearing would proceed without the customers present. The customers did not oppose Claimant's request for expungement.

Claimant withdrew his request for compensatory damages at the hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant [REDACTED] considered the Settlement Agreements in the underlying claims, considered the amount of payments made to the customers, 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 request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlements.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of occurrence numbers [REDACTED] and [REDACTED]

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings; party submissions; Claimant's testimony; and Claimant's BrokerCheck® Report.

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 all references to occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by the Central Registration Depository ("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 directives.

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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

Occurrence number [REDACTED]

The 1998 Statement of Claim of the customer covered the relevant period of 1992-1998. The customer requested \$500,000.00 for "exemplary damages to deter further misconduct." According to the Statement of Claim, the customer's account of \$440,000.00 lost \$15,000.00 in 1994. There is no mention of losses (or gains) in other years. In the case settlement the customer received \$14,800.00. Because the original case is 20 years old the usual documents sought in arbitration and expungement cases, such as account opening forms and account statements are unavailable. Respondent claims to have offered minimal settlements in order to avoid the expense of arbitration. The fact that the customer accepted the small amount without a hearing appears to validate Respondent's action and Claimant's defense. Claimant has denied all charges of misconduct. He testified that he communicated regularly with the customer, stayed current with his investment objectives and required that the customer preapprove all transactions. Claimant offered his exemplary record of twenty years with Respondent to support his case. It is this Arbitrator's opinion that the CRD entries are misleading and thus false. It alleges large, unsubstantiated damages that appear unrealistic given the context. It should be expunged from Claimant's CRD.

Occurrence number [REDACTED]

The 1998 Statement of Claim of the customer (the sister of the customer in occurrence number 279468) covered the relevant period of 1992-1998. The customer requested \$200,000.00 for "exemplary damages to deter further misconduct." According to the Statement of Claim, the customer's account of about \$150,000.00 lost over \$12,000.00 between January 1, 1994 and December 31, 1995. There is no mention of losses (or gains) in other years. In the case settlement the customer received \$9,800.00. Because the original case is 20 years old the usual documents sought in arbitration and expungement cases, such as account opening forms and account statements are unavailable. Respondent claims to have offered minimal settlements in order to avoid the expense of arbitration. The fact that the customer accepted the small amount without a hearing appears to validate Respondent's action and Claimant's defense. Claimant has denied all charges of misconduct. He testified that he communicated regularly with the customer, stayed current with her investment objectives and required that she preapprove all transactions. Claimant offered his exemplary record of twenty years with Respondent to support his case. It is this Arbitrator's opinion that the CRD entries are misleading and thus false. It alleges large, unsubstantiated damages that appear unrealistic given the context. It should be expunged from Claimant's CRD.

FEES

Pursuant to the Code of Arbitration Procedure, 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, Merrill Lynch, Pierce, Fenner & Smith 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, including a pre-hearing conference with the arbitrator, 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: February 13, 2018 1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: May 16, 2018 1 session	

Total Hearing Session Fees	=\$ 100.00
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The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

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

ARBITRATOR

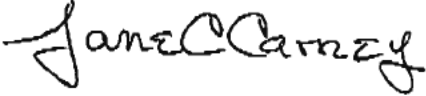
Jane C. Carney

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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:



May 24, 2018

Jane C. Carney
Sole Public Arbitrator

Signature Date

May 24, 2018

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