

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Raymond James Financial Services, Inc.

Hearing Site: Salt Lake City, Utah

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Raymond James Financial Services, Inc. (“Respondent”): Robert M. Rudnicki, Esq., Raymond James Financial Services, Inc., St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed on or about: November 6, 2017.

Claimant signed the Submission Agreement: November 6, 2017.

Statement of Answer filed by Respondent on or about: November 10, 2017.

Respondent signed the Submission Agreement: December 21, 2017.

CASE SUMMARY

Claimant asserted a claim seeking expungement of four customer complaints from his Central Registration Depository (“CRD”) records: occurrence numbers ██████████, ██████████, ██████████, and ██████████, hereinafter collectively referred to as “Underlying Complaints.”

In the Statement of Answer, Respondent advised that it did not oppose Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually

- impossible or clearly erroneous;
2. Expungement of occurrence number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(B) as the Claimant was not involved in alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
 3. Expungement of the Underlying Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
 4. Damages in the amount of \$1.00 from Respondent; and
 5. Any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

By order dated February 14, 2018 ("February 14 Order"), the Arbitrator ordered Claimant to serve the customer in occurrence number [REDACTED] ("Ms. M"); the customers in occurrence number [REDACTED] ("Mr. and Mrs. B"); the customer in occurrence number [REDACTED] ("Ms. W"); and the customer in occurrence number [REDACTED] ("Ms. V") with the following: a notice of the Statement of Claim; notice of the telephonic expungement hearing; and a statement that any customer who intends to participate in the hearing shall provide notice of that intention and an estimated time for the presentation of any evidence to FINRA by May 9, 2018.

Hereinafter Ms. M; Mr. and Mrs. B; Ms. W; and Ms. V are collectively referred to as "Underlying Customers."

On March 6, 2018, Claimant provided notice that the Statement of Claim, notice of the expungement hearing and a copy of the February 14 Order was served on the Underlying Customers.

On March 6, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Underlying Customers were served with copies of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on May 21, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing. As stated in its Statement of Answer, Respondent did not oppose the request for expungement. The Underlying Customers did not appear at the expungement hearing. The Arbitrator found that the Underlying Customers were given notice of the expungement hearing.

Claimant withdrew his request for \$1.00 in damages against Respondent at the hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator found that the Underlying Complaints were not settled and therefore there were no settlement documents to review.

The Arbitrator noted that Claimant 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: Exhibit 1 – Claimant’s BrokerCheck® Report and CRD Individual Snapshot Report, dated November 6, 2017; Exhibit 8 – Manulife Financial Venture III Annuity Welcome Kit for Ms. M dated June 2, 2003; Exhibit 11 – Respondent’s letter to Ms. M, dated February 14, 2007; Exhibit 23 – Mr. and Mrs. B’s complaint letter to the SEC, dated October 27, 2006; Exhibit 25 – Ms. W’s complaint letter to the SEC, dated October 27, 2006; Exhibit 26 – Ms. V’s complaint letter to the SEC, dated October 27, 2006; and Claimant’s testimony.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

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 the Underlying Complaints, occurrence numbers [REDACTED], [REDACTED], [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] (in which Ms. M was the customer)

Pursuant to Rule 13805 of the Code of Arbitration Procedure (“Code”), the Arbitrator has made the following Rule 2080 affirmative findings of fact: the claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

Ms. M received and acknowledged receipt of information regarding the nature of the investments, the risks, charges, penalties and surrender charges and tax aspects that are the subject of the claims of unauthorized investments (Exhibits 1, 11). The investment in Manulife Annuity (see Exhibit 8) was part of a suitable strategy for Ms. M based on her spending practices, assets and her stated objectives. Ms. M reviewed and signed all of the annuity paperwork a second time when she

authorized the investment to be transferred from one broker to another. She received reports regarding the investments and made withdrawals from it.

Ms. M married Claimant's ex-business partner, Mr. JB, who threatened to ruin Claimant after the business relationship between Claimant and his business partner deteriorated.

Complaint letters were sent from Mr. JB's office to investors who had stayed with Mr. JB after Claimant and Mr. JB severed their business relationship. These letters, prepared on the same date for the signature of the investors, made claims that Claimant had placed these customers into unsuitable investments. The letters revealed Claimant's social security number which the investors would have no way of knowing. The claims in these letters were untrue. The signed complaint letters were sent by Mr. JB to Claimant's current employer and to Respondent. These claims were investigated by the employers and denied.

Occurrence Number [REDACTED] (in which Mr. and Mrs. B were the customers)

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact: the claim, allegation, or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

Mr. and Mrs. B, parents of Mr. JB, Claimant's ex-partner, were experienced investors whose investment adviser was their son, for the investments at the time they were placed, not Claimant. The complaint letter (Exhibit 23) sent to the SEC and other regulatory bodies that purported to state the claim against Claimant was similar in significant ways to the letter sent on behalf of Ms. M to the SEC and other regulatory bodies. The NASD denied the claim finding that Mr. and Mrs. B signed the necessary paperwork. Further, Mr. and Mrs. B acknowledged the suitability of the investment in an annuity. Claimant was not involved with in the alleged investment-related sales practice.

Occurrence Number [REDACTED] (in which Ms. W was the customer)

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact: the claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

Ms. W and her husband received annuity applications, an investment advisory agreement and had numerous conversations about their investments with Claimant and his business partners. Ms. W and her husband received quarterly statements

and had monthly conversations with Claimant about their investments. A complaint letter (Exhibit 25) similar to the letter sent from Mr. JB's office to Ms. M and Mr. and Mrs. B for signature on the same date was also sent to regulatory agencies. In 2007, Ms. W made a claim with the NASD alleging that the annuity investment was unsuitable and unauthorized. The allegations were false as Claimant had a reasonable basis to believe that the annuity was suitable for Ms. W and her husband based on the due diligence of all persons involved in the transaction - Ms. W and her husband's 20 years of investment experience; and the NaviPlan assessment of their financial situation. Ms. W and her husband signed an acknowledgment of the details, risks, costs, fees, advantages and disadvantages of the annuity.

Occurrence Number [REDACTED] (in which Ms. V was the customer)

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact: the claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

Ms. V signed account forms for the annuity she purchased, spoke with Claimant on several occasions about the annuity, and executed a withdrawal request which showed her knowledge that she was invested in an annuity. A complaint letter (Exhibit 26) similar to the letter sent to the parties involved in the other occurrences which are the subject of this hearing was also sent to regulatory bodies and to Respondent. Respondent denied the claim

2. 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(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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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: February 14, 2018 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: May 21, 2018 1 session	

Total Hearing Session Fees	= \$100.00
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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

Mary Margaret Bush

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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



Mary Margaret Bush
Sole Public Arbitrator

5/30/18

Signature Date

May 30, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)