

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Kansas City, Missouri

SII Investments, Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent SII Investments, Inc. (“Respondent” or “SII”): Scott R. Forbush, Esq., SII Investments, Inc., Lansing, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 2017.
Claimant signed the Submission Agreement: August 22, 2017.

Statement of Answer filed on or about: November 7, 2017.
Respondent signed the Submission Agreement: September 13, 2017.

CASE SUMMARY

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

In the Statement of Answer, Respondent took no position on Claimant’s request for expungement and advised that it would not enter a formal appearance or participate in the expungement hearing.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$1.00 in compensatory damages and expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

During the Initial Pre-Hearing Conference held on January 5, 2018, Claimant withdrew his request for \$1.00 in compensatory damages.

On or about May 18, 2018, Claimant served the customers with the Statement of Claim, notice of the expungement hearing, including the date and time, and the option to participate in the expungement hearing. On or about May 24, 2018, Claimant filed an Affidavit of Service.

The Arbitrator conducted a recorded, telephonic hearing on May 28, 2018, for the presentation of testimony and evidence on [REDACTED] request for expungement. Respondent did not participate in the expungement hearing and did not contest the request for expungement. The customers did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED].

For Occurrence Number [REDACTED], the settlement agreement could not be located. Claimant's counsel explained his efforts and results during the hearing. The Statement of Claim referenced that [REDACTED] contributed \$5,000.00 to the settlement amount.

For Occurrence Number [REDACTED], there was no settlement.

For Occurrence Number [REDACTED] the Arbitrator reviewed 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 settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount.

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:

- For Occurrence Number [REDACTED] Exhibits 8-9 of the Statement of Claim: the customer's complaint to the Kansas Insurance Department; [REDACTED]'s letter to the Kansas Insurance Department in response to the customer's complaint; and the Kansas Insurance Department's letter to American Investor Life Insurance Co. regarding the customer's complaint.
- For Occurrence Number [REDACTED]: Exhibits 10-13 of the Statement of Claim: the customer's complaint letter; [REDACTED]'s response to the customer's complaint letter; and the Statement of Claim and SII's Statement of Answer in the underlying FINRA arbitration case. Exhibits 16-23 of Submission of

Expungement Hearing Exhibits: the customer's account registration documents; disclosure documents; subscription agreements; and settlement agreement.

AWARD

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

1. [REDACTED] request for expungement of Occurrence Number [REDACTED] from his CRD records is denied.
2. The Arbitrator recommends the expungement Occurrence Number [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.

Pursuant to Rule 13805 of the Code of Arbitration Procedure ("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:

- There was no reason "not to report death of mother to the insurance company". Such a reporting would have no effect on the A1 policy. Clearly, the customer was aware of her options and chose to wait or she would have immediately made a claim.
- Both the customer and her mother (now deceased) were advised of the surrender charges during the initial decision process. In fact, the customer already had a similar investment herself, which probably was why she sought this product for her mother.
- The A1 policy cannot per se be called unsuitable solely because of a person's age. There was no immediate need for the money and a better return than a CD was sought by the customers. The A1 policy is a relatively low-risk, fixed-rate investment. The customer's complaint on suitability seems aimed more at the insurance company and her argument that the policy should not have been issued because of her mother's age. Plus, the customer was apparently unhappy with her return on the similar product from the insurance company.
- The customer's complaint to the Kansas Insurance Department was concluded with "Closed/No action". No FINRA request for arbitration was filed.

3. The Arbitrator recommends the expungement Occurrence Number [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.

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 most important factors for evaluating credibility in this case are common experience and the time line of events. The two real estate investment trust ("REIT") investments were purchased in 2004 and the GM bonds in 2005. Both suffered big declines in the 2008 financial crisis. The customer was regularly advised of the value of these investments. The customer bought more GM bonds after the Claimant had left SII Investments. However, the complaint of misrepresentation and unsuitability was not filed until April 2012. The customer had not been the Claimant's client since May 2005. The claim of \$150,000.00 was settled for \$35,000.00, basically a nuisance amount. The Claimant contributed nothing to the settlement amount.
- The customer signed all the disclosure forms about risks in 2004 and 2005. Looking back to 2004 and the customer's financial situation, it cannot be found the investments were unsuitable given the investment climate at that time. The customer in 2012 presumably was claiming misrepresentation about the risks involved.
- The customer himself decided to purchase the GM bonds and he sought a REIT type investment.

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, SII Investments, Inc. is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

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

April 13, 2018, postponement requested by Claimant = \$ 50.00
Total Postponements Fees = \$ 50.00

The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

April 13, 2018, postponement requested by Claimant on April 5, 2018 = \$ 600.00
Total Last Minute Cancellation Fees = \$ 600.00

The Arbitrator has assessed \$600.00 of the last minute cancellation fees to Claimant.

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 5, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: May 28, 2018 1 session

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

M. W. Gear

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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/ M. W. Gear

M. W. Gear
Sole Public Arbitrator

June 12, 2018

Signature Date

June 12, 2018

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

ARBITRATOR

M. W. Gear

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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

M. W. Gear

6/12/18

M. W. Gear
Sole Public Arbitrator

Signature Date

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