

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Seattle, Washington

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Wells Fargo Clearing Services, LLC ("Respondent"): Thomas F. Kopshever, Esq., Wells Fargo Law Department, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: October 13, 2017.
Claimant signed the Submission Agreement: October 13, 2017.

Response to the Statement of Claim filed by Respondent on or about: October 31, 2017.
Respondent signed the Submission Agreement: October 31, 2017.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a customer dispute, occurrence number ██████████ ("Underlying Complaint") from her Central Registration Depository ("CRD") records.

In the Response to the Statement of Claim, Respondent advised that it does not have a position regarding Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from her 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 the Underlying Complaint from her CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
 3. Damages in the amount of \$1.00 from Respondent; and
 4. Any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 30, 2017, Claimant submitted an affidavit of the customer in the Underlying Complaint ("Customer"). The affidavit included the following statement: "I received notice of the request for expungement by the Claimant and I fully support the expungement of my complaint from his [sic] BrokerCheck. The complaint was never intended as a complaint against the Claimant and the current allegation on his [sic] BrokerCheck is false and inaccurate."

On March 19, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the Customer.

On March 21, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Customer was served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on May 1, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and took no position regarding the request for expungement (as stated in its Response to the Statement of Claim). The Customer did not participate in the expungement hearing and did not oppose the request for expungement (as stated in her affidavit). The Arbitrator found that the Customer in the Underlying Complaint received all necessary notice of the request for expungement and was given a full description of her right to participate in the hearing by testifying, presenting evidence, and/or conducting cross-examination.

At the evidentiary hearing, Claimant withdrew her request for \$1.00 in compensatory damages.

On May 16, 2018, the Arbitrator ordered the parties to provide any papers regarding any settlement or agreement as to Respondent's intention to make the Customer whole by buying back the Auction Rate Security ("ARS"). On May 25, 2018, Claimant filed a Response to the Arbitrator's Request for Additional Information advising that there was a global settlement agreement between the Securities Exchange Commission and Wachovia Securities, LLC (A/K/A Wells Fargo Clearing Services, LLC) relating to the buyback of ARS investments, but that she does not have a copy of the settlement agreement and was unable to obtain a copy from Respondent.

On May 30, 2018, the Arbitrator ordered the parties to produce copies of the written documents signed by the Customer at the time of, or prior to, her purchase of the ARS in 2006. The Arbitrator further requested that if the exact document is unavailable, an exact unsigned copy of the document that contains the same language describing the risks, i.e. the potential for illiquidity, should be produced. The Arbitrator also requested copies of any documentation of Claimant's representations to the Customer regarding the potential illiquidity of the investment and ordered Respondent to produce all sales literature, which describes the investment. On June 8, 2018, Respondent filed documents in response to the May 30 Order.

On June 22, 2018, the Arbitrator advised the parties that Respondent's submission did not address the issue of potential illiquidity of the investment. The Arbitrator again ordered the parties to submit documents presented to the Customer that described the risks of the investment. On July 2, 2018, Claimant filed a response to the June 22 Order and included a copy of a pro forma Offering Memorandum to the South Carolina Student Loan Corporation Student Loan Backed Notes. On July 6, 2018, Respondent filed a response to the June 22 Order.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator noted that there were no settlement documents to review as Respondent chose to refund the Customer her entire initial investment as part of a global action regarding this and other ARS investors. The Arbitrator noted that this refund to the Customer was not conditioned on the Customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the refund, nor did she participate in the decision to make the Customer whole.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings, the testimony of Claimant, and evidence presented in the Statement of Claim and at the expungement hearing. Respondent was unable to produce a signed copy of the Offering Memorandum as the date of the document was beyond their document retention period. Further, Claimant ceased to be employed by Respondent in August 2008 and she was not permitted to retain any client information or documentation. As stated, Claimant did, however, submit a copy of a pro forma Offering Memorandum to the ARS investment at issue. That document, on page 16 under the heading "If a Secondary Market for the 2004-A Series Note Does Not Develop, the Value of the 2004-A Series Notes May Diminish," clearly addresses the potential for illiquidity.

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, and post-hearing submissions, 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 Complaint, occurrence number [REDACTED], from the 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 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:

The Underlying Complaint was filed by the Customer requesting that she be made whole for her investment in an instrument (an Auction Rate Security or "ARS") that had, through no fault of Claimant, become illiquid. The Customer was made whole by action of Respondent to which Claimant did not contribute, and its underlying cause was the dramatic 2008 market forces that were unforeseeable and beyond Claimant's control. The Customer's claim that Claimant had guaranteed the liquidity of the ARS investment is factually impossible, erroneous, and false as evidenced by the Customer having signed written documents that clearly state that there was a possibility of reduced liquidity. This feature had also been discussed more than once and in thorough detail by Claimant and the Customer. This, therefore, meets both the FINRA Rule 2080(b)(1)(A) and Rule 2080(b)(1)(C) standard for a recommendation for expungement.

In recommending expungement, the Arbitrator relied upon Claimant's testimony and the arguments found in the Statement of Claim, both of which were found to be credible. Weight was also given to the fact that Respondent offered no opposition, that the Customer supported Claimant's request for expungement, and that the Customer had her original investment money returned to her so no harm befell her. As previously stated, Claimant did not participate in the decision to make the Customer whole nor did she in any way contribute to the refund.

In conclusion, expungement is recommended in this case as the necessary standards of FINRA Rule 2080 (b)(1)(A) and (b)(1)(C) in all or in part were met and, therefore, to have the information remain on Claimant's CRD record serves no meaningful investor protection or regulatory value.

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 8, 2018 1 session	

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

Michael Lancaster Garcia

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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



Michael Lancaster Garcia

Michael Lancaster Garcia
Sole Public Arbitrator



Signature Date

July 16, 2018

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