

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number ██████████

vs.

Respondent

First Allied Securities, Inc.
Round Hill Securities, Inc.

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

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

For Respondent First Allied Securities, Inc. (“First Allied”): Jeremy Wooden, Esq., Cetera Financial Group, El Segundo, California.

Respondent Round Hill Securities, Inc. (“Round Hill”) did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: September 18, 2017.

Amended and Second Amended Statements of Claim filed on: March 5, 2018.

Claimant signed the Submission Agreement: September 18, 2017.

Statement of Answer in Response to Claimant’s Second Amended Statement of Claim filed by First Allied on or about: March 26, 2018.

First Allied signed the Submission Agreement: March 26, 2018.

Round Hill did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two customer disputes (“Underlying Claims”): one customer complaint, occurrence number ██████████; and one FINRA arbitration case, occurrence number ██████████, from his Central Registration Depository (“CRD”) records. In the Statement of Claim, Claimant named Round Hill as a respondent.

In the Amended Statement of Claim, Claimant removed Round Hill and added First Allied as a respondent but otherwise did not change the Statement of Claim.

In the Second Amended Statement of Claim, added additional background information but otherwise did change the Amended Statement of Claim.

Unless specifically admitted in the Statement of Answer in Response to Claimant's Second Amended Statement of Claim, First Allied denied any allegations of wrongdoing but otherwise deferred to the Arbitrator's findings in this matter with respect to Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested the following against Round Hill:

1. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information is false.
3. Damages in the amount of \$1.00 from Round Hill.
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim and Second Amended Statement of Claim, Claimant requested the same relief as set out above against First Allied.

In the Statement of Answer in Response to Claimant's Second Amended Statement of Claim, First Allied requested:

1. A statement from the Arbitrator on the issue of whether to order recommending that the Underlying Claims be expunged from Claimant's CRD record in the form required by FINRA Rule 2080;
2. Denial of all other requests for relief; and
3. An order that all forum costs are assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 11, 2018, Claimant submitted a copy of a LexisNexis search for the customer in occurrence number [REDACTED] ("Mr. W"), which indicated that Mr. W is deceased.

On the same date, Claimant provided notice that the Statement of Claim and notice of the expungement hearing (scheduled for March 6, 2018) was served on the customers in occurrence number [REDACTED] ("Mr. and Mrs. K").

On February 6, 2018, Claimant filed a Motion to Amend the Statement of Claim. On February 8, 2018, Claimant filed a Second Motion to Amend the Statement of Claim. By

order dated March 4, 2018, the Arbitrator ordered as follows: both of Claimant's motions to amend were granted; the expungement hearing set for March 6, 2018 was postponed; Respondent had until March 26, 2018 to respond; and Claimant was to submit to FINRA a brief describing the differences between the Statement of Claim, the Motion to Amend the Statement of Claim, and the Second Motion to Amend the Statement of Claim.

On March 12, 2018, Claimant filed a Notice of Voluntary Dismissal Without Prejudice as to Round Hill. On the same date, Claimant filed a submission regarding the differences in the Statement of Claim and the motions to amend.

On March 5, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Mr. and Mrs. K with the Statement of Claim and that Claimant was unable to serve Mr. W with the Statement of Claim as he is deceased.

On June 22, 2018, Claimant provided notice that Mr. and Mrs. K had been given notice of the time and date of the expungement hearing set for July 11, 2018.

On June 25, 2018, Claimant filed an Affidavit of Follow Up Customer Service signed by Claimant's counsel advising that Mr. and Mrs. K were served with the Statement Claim and that Claimant was unable to serve Mr. W with the Statement of Claim as he is deceased.

The Arbitrator conducted a recorded telephonic hearing on July 11, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

First Allied participated in the expungement hearing and did not contest the request for expungement. Mr. and Mrs. K did not appear at the expungement hearing.

At the evidentiary hearing, Claimant withdrew his request for \$1.00 in damages against First Allied.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents with Mr. and Mrs. K (occurrence number [REDACTED]). The Arbitrator 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 Mr. and Mrs. K not opposing the request for expungement. The Arbitrator noted that the settlement was negotiated and settled by the insurance company for Claimant's brokerage firm and that, although Claimant was involved in the settlement agreement, he did not personally pay any monies toward the settlement. The settlement amount was paid by the insurance company to avoid the expense of litigation.

The Arbitrator noted that there was no settlement with Mr. W and therefore no settlement documents for him to review with respect to occurrence number [REDACTED].

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: exhibits submitted by Claimant and Claimant's testimony at expungement hearing.

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 Claims, occurrence numbers [REDACTED] and [REDACTED] 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 Mr. W is the underlying 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 false.

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

Mr. W was an experienced and sophisticated investor who typically initiated his own trades and frequently made his own investment decisions. He made independent decisions without the advice of Claimant to sell stock short, leverage margin accounts, investigate investment opportunities, and trade the preferred stock of companies facing bankruptcy. The allegation that his accounts were "mismanaged" is false. Mr. W was intimately involved in all management decisions and often directed the investment decision himself. Mr. W was responsible for managing his accounts, not the broker. The accounts were not discretionary.

Occurrence Number [REDACTED] (in which Mr. and Mrs. K are the underlying customers)

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact: 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. K transferred their accounts away from Claimant and his brokerage firm in 2005, and severed communications with Claimant and his brokerage firm. Claimant had no access to the accounts and had no way to manage the accounts once they were transferred to another brokerage firm. Several years passed, and the global markets experienced an historical correction in 2008. Mr. and Mrs. K undoubtedly realized a loss in the 2008 market correction, but any loss on their accounts three years after they stopped working with Claimant, cannot be attributed to Claimant.

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, Round Hill is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, First Allied 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:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session	= \$100.00
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Pre-hearing conferences:	January 2, 2018	1 session	
	June 21, 2018	1 session	
One (1) hearing session on expungement request @ \$50.00/session			=\$50.00
Hearing Date:	July 11, 2018	1 session	
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Total Hearing Session Fees			=\$150.00

The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Ralph A. Cotton

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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



Ralph A. Cotton
Sole Public Arbitrator

7-25-18

Signature Date

July 30, 2018

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