

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: Raleigh, North Carolina

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Eric Litow, Esq., 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: January 24, 2018.

[REDACTED] signed the Submission Agreement: January 24, 2018.

Statement of Answer filed by Respondent on or about: March 19, 2018.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: March 26, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

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

In the Statement of Answer, Respondent requested that Claimant's request for compensatory damages be denied. Respondent takes no position on Claimant's request for expungement of his CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded telephonic hearing on August 9, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaints with notice of his expungement request and notice of the customers' right to participate and testify at the expungement hearing. The customers did not participate in the expungement hearing and did not contest the request for expungement.

At the hearing, Claimant withdrew his request for compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for Claimant [REDACTED] and the settlement documents relating to occurrence number [REDACTED] considered the amount of payments made to the customer, 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 Claimant [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that Claimant [REDACTED] 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, witness testimony, Claimant's BrokerCheck® Report, party submissions; and the settlement agreement relating to occurrence number [REDACTED].

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 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 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:

Occurrence Number [REDACTED]

Customer filed a complaint for failure to liquidate after agreeing not to request liquidation pending meeting with the Claimant. The customer later affirmed that agreement during a conversation with Respondent's Compliance Department staff member.

Occurrence Number [REDACTED]

Customer filed arbitration claim. Case settled for a minimal amount based solely on a business decision by Respondent. Customer later apologized for filing claim he admitted he should not have done so. In fact, customer wanted to maintain his account at Merrill Lynch with broker but Merrill Lynch refused.

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

**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

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: May 30, 2018		1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: August 9, 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

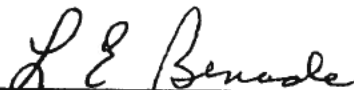
Leonard E. Benade

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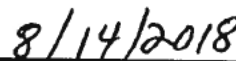
Sole Public Arbitrator

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



Leonard E. Benade
Sole Public Arbitrator



Signature Date

August 14, 2018

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