

**Award**  
**FINRA Office of Dispute Resolution**

---

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Securities America, Inc.

Hearing Site: New York, New York

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] Armin Sarabi, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Securities America, Inc.: Tyler Schubauer, Esq., Securities America, Inc., Lavista, Nebraska.

**CASE INFORMATION**

Statement of Claim filed on or about: December 15, 2017.

[REDACTED] signed the Submission Agreement: December 15, 2017.

Statement of Answer filed by Respondent on or about: February 21, 2018.

Securities America, Inc. signed the Submission Agreement: February 16, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Respondent asserted that Claimant acted as an independent contractor and not an employee as alleged in the Statement of Claim.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of occurrence numbers [REDACTED], [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 the Arbitrator deny Claimant's request for compensatory damages. Respondent does not oppose Claimant's request for expungement.

### **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 in-person hearing on July 18, 2018 and a supplemental recorded telephonic hearing on August 14, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

The customers in the underlying claims related to occurrence numbers [REDACTED] and [REDACTED] did not participate in the expungement hearing. The Arbitrator determined that the customers received a copy of the Statement of Claim and received due notice of the expungement hearing and that the hearing would proceed without the customers present. The customers in occurrence number [REDACTED] submitted affidavits supporting Claimant's expungement request. The customers in occurrence numbers [REDACTED] and [REDACTED] did not oppose Claimant's request for expungement.

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

The Arbitrator noted that Claimant [REDACTED] did not previously file a claim requesting expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED].

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; testimony of Claimant, documents relating to the risks of investing in the Short Term High Yield notes issued by Medical Capital Corporation (MedCap), documents relating to the criminal conduct of MedCap's President which was unknown at the time of the investments, Claimant's BrokerCheck® Report, and the settlement agreements.

The Arbitrator reviewed the BrokerCheck® Report for Claimant [REDACTED] and the settlement documents, considered the amount of payments made to the customers, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on customers not opposing the requests for expungement. The Arbitrator also noted that Claimant did not contribute to the settlements.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement 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], [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 finding of fact:

The claim, allegation, or information is false.

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

Occurrence number [REDACTED]

The claims arise from the purchase of Short Term High Yield Notes issued by MedCap. MedCap was subsequently found to have engaged in a Ponzi scheme, and was placed in receivership by the Securities and Exchange Commission. Its President was convicted of criminal conduct and sentenced to ten years of imprisonment. The customer approached Claimant about purchasing MedCap Notes. She had not previously been a customer of his. He concluded that, in view of her investment objectives as a high net worth individual, the MedCap Note had many features that would make them an appropriate addition to her portfolio and would provide desirable diversification. MedCap appeared to be successfully engaged in the business of purchasing at a discount, accounts receivable of organizations and individuals in the medical field. The Notes provided a high rate of interest in the 8% range. The risks they presented were explained in detail to the customer in both written and oral communications. The one year Notes were renewed four times by the customer and paid the full interest amounts through 2008. The customer did not file a claim against Claimant.

Occurrence Number [REDACTED]

The claims arise from the purchase of Short Term High Yield Notes issued by MedCap. MedCap was subsequently found to have engaged in a Ponzi scheme, and was placed in receivership by the Securities and Exchange Commission. Its President was convicted of criminal conduct and sentenced to ten years of imprisonment. The customers are Claimant's parents. They are high net worth individuals for whom the investment in the MedCap Notes made sense. They received written and oral disclosures about the risks. They did not file a claim against Claimant and continue to be customers of Claimant.

Occurrence Number [REDACTED]

The claims arise from the purchase of Short Term High Yield Notes issued by MedCap. MedCap was subsequently found to have engaged in a Ponzi scheme, and was placed in receivership by the Securities and Exchange Commission. Its President was convicted of criminal conduct and sentenced to ten years of imprisonment. The customers are high net worth individuals and continue to be customers of the Claimant. The investment in MedCap Notes was appropriate as part of an overall asset allocation strategy. They were fully informed about the risks. The customers did not file a claim against Claimant.

**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, Securities America, 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 4, 2018 1 session

Two (2) hearing sessions @ \$50.00/session = \$ 100.00  
Hearing Dates: July 18, 2018 1 session  
August 14, 2018 1 session

---

Total Hearing Session Fees = \$ 150.00

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

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

**ARBITRATOR**

Stephen A. Weiner

-

Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**

*Stephen A. Weiner*

\_\_\_\_\_  
Stephen A. Weiner  
Sole Public Arbitrator

*AUG. 15 2018*

\_\_\_\_\_  
Signature Date

August 16, 2018

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