

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Lincoln Financial Advisors Corporation

Hearing Site: Syracuse, New York

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochter Kennedy and Harris Freedman, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Lincoln Financial Advisors Corporation: Kyle Osting, Esq. and Michael Arnold, Esq., Lincoln Financial Advisors Corporation, Fort Wayne, Indiana.

**CASE INFORMATION**

Statement of Claim filed on or about: January 24, 2018.

██████████ signed the Submission Agreement: January 24, 2018.

Statement of Answer filed by Respondents on or about: March 5, 2018.

Lincoln Financial Advisors Corporation signed the Submission Agreement: February 13, 2018.

**CASE SUMMARY**

Claimant asserted the following causes of action: expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

- a. expungement of occurrence number ██████████ from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information is factually impossible or clearly erroneous.
- b. expungement of occurrence number ██████████ from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false.

- c. an award of compensatory damages in the amount of \$1.00 from the Respondent; and
- d. any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer Respondent, did not contest Claimant's request for expungement and stipulated to the expungement of Claimant's CRD records.

At the close of the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customer related to occurrence number [REDACTED] the expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

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

The Respondent participated in the expungement hearing, and did not contest the request for expungement.

The customer related to occurrence number [REDACTED] did not participate in the expungement hearing, but contested the request for expungement in a written statement dated July 10, 2018.

The Arbitrator reviewed Claimant's BrokerCheck® Report and the settlement documents, considered the amount of payments made to the customer, and considered the 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 contributed to the settlement amount. The Arbitrator determined that Claimant's contribution to the settlement was paid by his insurance carrier, less the deductible.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Claimant Statement of Claim, Respondent's Statement of Answer Claimant's BrokerCheck® Report, the settlement agreement, letter from the customer related to occurrence number [REDACTED], and the evidence and testimony presented at the expungement hearing.

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

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the telephonic 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 number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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 false.

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

I find the claim made by the customer to be erroneous and false. Specifically, I find that claimant had a reasonable basis to believe that the disputed investment was suitable for the customer and that the customer clearly understood the investment. Specifically, she understood the surrender charges attached to her investment decisions.

In this matter, the most compelling evidence is the events leading up to the initial investment and the process leading up to the complaint. As evidence, I considered the testimony of [REDACTED] which was supported by the relevant documents as well as the documents regarding the complaint.

Specifically, the customer asserted in her complaint that she had been unaware of surrender charges; however, the customer signed documents authorizing specific surrender charges. She did so on five separate occasions. The customer was a school psychologist at the time she signed the documents. It is not credible for me to accept, as her complaint suggests, that she was unaware of the consequences of her signature. Further, her complaint referenced having met a total of 15 minutes with [REDACTED]. Again, this is not credible in light of Lincoln Financial's investigation and response to the customer.

Further, upon my questioning, [REDACTED] revealed that he was an “approved vendor” by the teachers in the customer’s school. [REDACTED] was not aware of whether or not this was a union or board approved status but he did confirm that the customer never raised this issue with her school and he confirmed that the school never raised this issue with him and that he remained a vendor at the customer’s work location. While [REDACTED] uncertainty about the source of his approval status mitigates his answer, Boards of Education are generally very careful about onsite sales practices to its employees and [REDACTED] continued status after the complaint must be considered by the arbitrator.

The customer sought to recover approximately \$6,300 in her initially complaint. After conferring with her husband the remedy sought climbed to approximately \$17,500. [REDACTED] testified that he, his Insurance (E & O policy) attorney and Lincoln Financial consulted together and agreed the costs of litigation far exceeded the possible cost of a settlement. The settlement provided that [REDACTED] pay \$5,940 and Lincoln Financial \$3,960. [REDACTED] testified his insurance carrier paid his portion minus the deductible. [REDACTED] payment was fixed by the deductible. Given the costs of litigation it made good business sense for the insurer and Lincoln Financial to reach a settlement given the size of the customer claim.

The customer was properly notified of the telephonic conference and chose to offer written testimony at this proceeding. Her written statement only included her opinion that the record of the complaint should remain on [REDACTED] Broker Check. There was no further explanation. As a result, I am left with weighing the credibility of her initial complaint against the testimony of [REDACTED] and Lincoln Financial’s investigation which found [REDACTED] to have acted properly. There is no record of Lincoln Financial having reprimanded [REDACTED] for his actions with this customer. The investigation thoroughly addressed and refuted the customer complaint. The thoroughness of the response was impressive and weighs heavily in my decision. I find that the accusations in the customer’s complaint are false.

2. Any and all claims for relief not specifically addressed herein are denied.

### **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
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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 event(s) giving rise to the dispute. Accordingly, as a party, Lincoln Financial Advisors Corporation 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 11, 2018 1 session

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

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Total Hearing Session Fees = \$ 100.00

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**

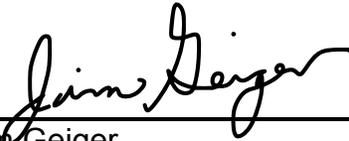
Jim Geiger

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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**

  
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Jim Geiger  
Sole Public Arbitrator

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

**August 23, 2018**

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