

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Hornblower & Weeks, Inc.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

Respondent Hornblower & Weeks, Inc. did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: November 29, 2017.

Claimant signed the Submission Agreement: November 29, 2017.

Respondent did not submit a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of a customer complaint from his CRD records, compensatory damages of \$1.00, and any and all other relief deemed just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file with FINRA Office of Dispute Resolution a Statement of Answer or properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, is bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator conducted a recorded telephonic hearing on August 7, 2018 so that the parties could present oral argument and evidence on Claimant's request for expungement.

On May 22, 2018, the Arbitrator ordered the Claimant to notify the customer in the underlying complaint about the expungement hearing and to serve him with a copy of the Statement of Claim. On June 13, 2018, the Claimant submitted an Affidavit that a search was conducted to obtain the address of the customer in the underlying complaint without success. Claimant also requested the information from the Respondent but Respondent never responded to the discovery request because it is now defunct. The Arbitrator was satisfied with Claimant's efforts to locate the customer, as such, the customer was not provided with a copy of the Statement of Claim and did not participate in the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report and the settlement documents, considered the amount of payments made to the customer, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that although the settlement was conditioned on the customer not opposing the request for expungement, it was not a violation of FINRA rules at that time the settlement was executed and the Arbitrator is satisfied that expungement is still appropriate. The Arbitrator also noted that Claimant contributed to the settlement amount for practical reasons as the cost of litigation would have exceeded the cost of settlement.

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, Claimant's testimony and the exhibits.

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 Number [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:

Claimant testified credibly that the margin account, when it was opened, was fully explained to the customer and the customer signed the paperwork acknowledging his understanding on the use of margin to purchase stocks. When the stocks in his account went down, the customer was contacted three times about the margin call and he did not respond. The stocks were sold because the customer did not meet the margin call.

2. Any and all claims for relief not specifically addressed herein, including compensatory damages, 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 events giving rise to the dispute. Accordingly, as a party, Respondent Hornblower & Weeks, Inc. 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, 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 @ \$50.00/session		= \$ 50.00
Pre-hearing conference: May 22, 2018	1 session	

One (1) hearing session on expungement request @ \$50.00/session		= \$ 50.00
Hearing Date: August 7, 2018	1 session	

Total Hearing Session Fees		= \$100.00
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The Arbitrator has assessed the hearing session fees of \$100.00 to Claimant.

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

ARBITRATOR

Howard D. Jacob

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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



Howard D. Jacob
Sole Public Arbitrator

August 27, 2018
Signature Date

August 28, 2018

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