

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Kestra Investment Services, LLC

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Eric Litow, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Kestra Investment Services, LLC: Michael Pedlow, Esq., Kestra Investment Services, LLC, Austin, Texas.

CASE INFORMATION

Statement of Claim filed on or about: January 24, 2018.
Claimant signed the Submission Agreement: January 24, 2018.

Statement of Answer filed by Respondent on or about: June 15, 2018.
Respondent did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following cause of action: expungement of his CRD records.

Respondent did not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00 expungement of occurrence numbers ██████████ and ██████████, and any and all other relief that the Arbitrator deems 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 properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the claim is bound by the determination of the Arbitrator on all issues submitted.

Respondent did not appear at the evidentiary hearing. Upon review of the file and the representations made by the Claimant, the Arbitrator determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

The Arbitrator determined the customers were provided a copy of the Statement of Claim and received due notice of the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on August 28, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

The customers did not participate in the expungement hearing and did not contest the request for expungement.

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

The Arbitrator noted that Claimant [REDACTED] 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: Claimant’s testimony and exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant’s request for compensatory damages is denied in its entirety.
2. 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:

The customers alleged unsuitability of the investment in Symmetry Partners and material misrepresentations and omissions in the sales process. [REDACTED] testified credibly that the investment was suitable for the customers' portfolio and that the investment was fully explained to the customers. Due to a combination of the market downturn in 2004 and excessive withdrawals, the portfolio declined, thereby triggering the complaint.

3. 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:

The customer alleged negligence in the sale of an investment, namely Hennessy Financial Monthly Investment Fund/Capital Solutions. [REDACTED] testified credibly that his broker dealer and himself conducted the proper due diligence before recommending the investment to the customer. In 2009, Hennessy Financial Monthly Investment Fund/Capital Solutions was found by the Securities and Exchange Commission to have committed fraud by misleading Investment Advisors

and investors regarding the accurate disclosure of financial information prior to both its failure and [REDACTED] recommendation of the fund to the customer.

4. 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 events giving rise to the dispute. Accordingly, as a party, Kestra Investment Services, LLC 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 with a single arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: May 15, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: August 28, 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

Howard D. Jacob

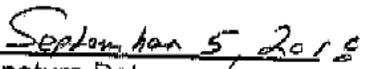
Sole Public Arbitrator

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



Signature Date

September 5, 2018

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