

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

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In the Matter of the Arbitration Between:

Claimant  
[REDACTED]

Case Number [REDACTED]

vs.

Respondent  
Transamerica Financial Advisors, Inc.

Hearing Site: Detroit, Michigan

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Eric H. Litow, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Transamerica Financial Advisors, Inc. ("Respondent"): Adam M. Wenner, Esq., Honigman Miller Schwartz and Cohn LLP, Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: December 28, 2017.

[REDACTED] signed the Submission Agreement: December 28, 2017.

Statement of Answer filed on or about: February 28, 2018.

Respondent signed the Submission Agreement: February 7, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint ("Underlying Complaint"), occurrence number [REDACTED], from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent did not object to Claimant's request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of the Underlying Complaint from his records maintained by the CRD, an award of \$1.00 in damages, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not request any specific relief.

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

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

On or about June 4, 2018, Claimant filed notice of service, in which Claimant provided a copy of the Statement of Claim and notice of the expungement hearing to the customer in the Underlying Claim

On or about June 7, 2018, Claimant filed an Affidavit of Service, in which Claimant's counsel, Eric Litow, swore that true copies of the Statement of Claim had been served on the customer in the Underlying Claim by means of Certified U.S. mail.

On or about June 11, 2018, the customer in the Underlying Complaint submitted an opposition to Claimant's request for expungement.

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

The customer in the Underlying Complaint did not participate in the expungement hearing.

Respondent participated in the expungement hearing, but did not contest Claimant's request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer in the Underlying Complaint not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

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 Brokerage statements from the Underlying Complaint and testimony given at the expungement hearing.

### **AWARD**

After considering the pleadings, the testimony, and the 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 number [REDACTED] from registration records maintained by the CRD, for Claimant (CRD # [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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:

Upon examination of this matter, the Arbitrator found that the customer in the Underlying Complaint was a walk-in client and had no prior history of working with Claimant. In addition, the customer was 76 years old and retired from Ford. He had a low threshold for risk tolerances, but also had extensive investment experience. The transactions at issue in the Underlying Complaint occurred mostly in 2008 when there was a financial downturn in the national economy. All the transactions were at the direction of the customer. There was no discretionary trading on this account by Claimant. Additionally, the stance of the portfolio from beginning to end did not show significant differences as to the types of investments or the results that came forward.

The Arbitrator believes this complaint was generated because of the poor market conditions at the time and not because of any advice or performance provided by the broker in this matter. There was no objection from Respondent with respect to the expungement of Claimant's records maintained by the CRD. The customer in the Underlying Complaint did submit a letter to FINRA objecting to the expungement, but declined to participate in the hearing. Therefore, the arbitrator concluded on the weight of the evidence, the allegations were false, and blame was being assessed to Claimant due to the market conditions at the time.

2. Claimant's request for \$1.00 in compensatory damages is denied.
3. 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, Respondent 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 2, 2018 1 session

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

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Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

**ARBITRATOR**

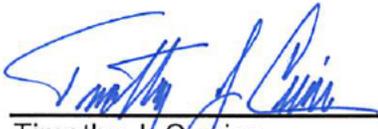
Timothy J. Currier

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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**

  
\_\_\_\_\_  
Timothy J. Currier  
Sole Public Arbitrator

9-7-18  
\_\_\_\_\_  
Signature Date

September 10, 2018

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