

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Transamerica Financial Advisors, Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Erica Harris, Esq, AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Transamerica Financial Advisors, Inc. ("Respondent"): Susan D. Duff, Esq., Transamerica Financial Advisors, Inc., St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed on: March 14, 2018.

Claimant signed the Submission Agreement: March 14, 2018.

Statement of Answer filed by Respondent on: May 7, 2018.

Respondent signed the Submission Agreement: May 4, 2018.

CASE SUMMARY

Claimant requested expungement of reference to a customer complaint, occurrence number ██████████ ("Underlying Claim") from his Central Registration Depository ("CRD") record.

In the Statement of Answer, Respondent advised that while it takes no position as to Claimant's request for expungement, it objects to Claimant's request for monetary relief.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;

2. Expungement of the Underlying Claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) finding the claim, allegation or information is false;
3. An award of compensatory damages in the amount of \$1.00 from Respondent; and
4. 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.

On July 12, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that, upon review of the public information available on the Lexis Nexis database, the customer in the Underlying Claim ("Customer") was deceased. Accordingly, service of the Statement of Claim and notice of the expungement hearing on the Customer could not be completed.

During the expungement hearing, Claimant withdrew the request for \$1.00 in damages.

The Arbitrator conducted a recorded telephonic hearing on August 13, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. No one appeared for the Customer at the expungement hearing.

At the conclusion of the expungement hearing the Arbitrator issued an order for post hearing submissions ordering Respondent to submit a final closing statement or a copy/statement of the final disbursement liquidation of the Customer's account; and Customer's complaint letter to the State of California Department of Insurance.

On August 20, 2018, Respondent submitted a response to the Arbitrator's order indicating that some of the responsive documents are in the possession of Non-Party Transamerica Life Insurance Co. ("Transamerica"), the product provider for the Customer's annuity. Respondent further states that Non-Party Transamerica is not a member a FINRA or a party to the case thus a third party subpoena is needed to compel the production of the requested documents.

On August 21, 2018, the Arbitrator issued a second order directing Claimant to draft a subpoena for production of documents directed to Non-Party Transamerica. On August 24, 2018, Claimant's provided a draft subpoena for the Arbitrator's review and execution. On August 28, 2018, Non-Party Transamerica provided responses to the subpoena.

On August 29, 2018, the Arbitrator issued an order for an additional hearing session to be held in the matter.

The Arbitrator conducted a second recorded telephonic hearing on September 5, 2018 so the parties could present additional oral argument and evidence on Claimant's request for expungement. No one appeared for the Customer at the second expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that Claimant did not previously request expungement of the Underlying Claim.

The Arbitrator determined that the Underlying Claim was not settled and therefore there were no settlement agreements to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

Claimant's Exhibit 1- tab 5:

- New Account Form dated 4/14/99
- Annuity Application- bates- 000025- - #16 'values vary based on the experience of the Variable Account, and are not guaranteed 'portfolio shares involve certain investment risks, including the possible loss of principal.'
- Notice Regarding Replacement- Notice of changing a life insurance policy
- Variable Annuity Disclosure Checklist- fees and risks initialed by Customer

Claimant's Exhibit 2- Subpoena documents received from Non-Party Transamerica:

- Statements beginning 12/31/99- showing cost basis of \$100,000
- 6/30/00 Statement showing high value of \$151,731, allocation of the Annuity to the stock mutual funds
- 12/31/00- 6/30/04 statements showing the value fluctuations
- 7/20/04 letter from Ms. Cobb requesting liquidation of the Annuity
- 9/21/04 Statement of closing value and check paid to Customer in the amount of \$104,638.29

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and 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 the Underlying Claim, occurrence number [REDACTED], from Claimant [REDACTED] (CRD# [REDACTED]) registration records maintained by the CRD, 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 of Arbitration Procedure (“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 that Claimant had not disclosed all aspects of the Variable Annuity, including the amount of the death benefit and various fees. After holding hearings, presentation of evidence, testimony by Claimant, review of the Subpoena documents, and answering questions, the Arbitrator finds that an Award is granted under Rule 13805 of the Code, Rule 2080(b)(1)(C) for expungement.

The Customer had initially purchased a fixed annuity product from the product provider, Non-Party Transamerica, prior to Claimant being referred to the Customer. The Customer was seeking a higher return, and therefore was willing to accept greater risk when purchasing a Variable Annuity. The purchase of a Variable Annuity indicated that the Customer was not seeking only a guaranteed return or death benefit. The New Account Form indicated that the Customer was seeking Total Return on her assets, rather than the safest category - Income. She had many years of experience in purchasing various securities, and that the purchase of the amount invested in the Variable Annuity would be a reasonable percentage of less than 15% of her overall Net Worth.

It was demonstrated that the Customer had adequate experience to understand the risks involved in switching from a Fixed Annuity to a Variable Annuity, and that the signed documents received by Claimant from the Customer adequately disclosed the various added risks of valuation and death benefit, fees, and early surrender charges. The Customer had initialed each item and signed the Variable Annuity Disclosure Checklist which included acknowledgement that the value of the policy could fluctuate and that when liquidating the contract, one could receive less than what was paid.

The Customer purchased the Variable Annuity from Claimant with an agreed upon fixed rate of 8% in the first year, subsequent allocation into various mutual funds was to take place after the first fixed rate ended. Customer allocated the funds into various equity and equity and income funds, all subject to market fluctuation and did not choose to have the funds invested in the more conservative or guaranteed investments. After the initial 1st year of the annuity, which was sold to the Customer by Claimant, the annuity value was allocated into various equity based mutual funds, ALL SUBJECT TO STOCK MARKET FLUCTUATION. Subsequent to the allocation into stock mutual funds and when the values were decreasing, Customer never instructed Claimant to change the investments within the Variable Annuity nor change the portfolio allocation

into more conservative investments or to change the Variable aspects of the Annuity.

The value of the Annuity did experience significant fluctuation as the financial markets decreased in the years subsequent to the Customer's purchase.

The original purchase was for \$100,000 and the final annuity was liquidated per the Customer's written instructions for \$104,638.99. Therefore, the Customer had a net gain in the value of the two annuity products purchased from Non-Party Transamerica.

The Customer should have known of the potential for fluctuating policy values and of the death benefit, and of the additional fee disclosures – all of which were the subject of her complaint to both Respondent and to the California Department of Insurance.

It is therefore determined and justified of the finding that the Claim, Allegation or information is false, meeting the requirement for expungement.

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

FEES

Pursuant to the Code, 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent 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(s), including a pre-hearing conference with the arbitrator(s), 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
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Pre-hearing conference:	June 26, 2018	1 session	
Three (3) Hearing session on expungement request @ \$50.00/session			=\$150.00
Hearing Date:	August 13, 2018	2 sessions	
	September 5, 2018	1 session	
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Total Hearing Session Fees			=\$200.00

The Arbitrator has assessed \$200.00 of the hearing session fees to Claimant.

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

ARBITRATOR

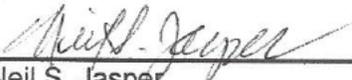
Neil S. Jasper

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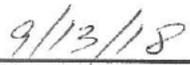
Sole Public Arbitrator

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



Neil S. Jasper
Sole Public Arbitrator



Signature Date

September 13, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)