

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Buffalo, New York

Keybank Capital Markets Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED]: Eric Litow, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Keybank Capital Markets Inc.: Daniela Paez, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: January 2, 2018.

Amended Statement of Claim filed on or about: March 19, 2018.

[REDACTED] signed the Submission Agreement: January 2, 2018.

Statement of Answer filed by Respondent on or about: February 23, 2018.

Keybank Capital Markets Inc. signed the Submission Agreement: March 5, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement of occurrence numbers [REDACTED].

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested the following:

1. expungement of occurrence numbers [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations or information is factually impossible or clearly erroneous;

2. expungement of occurrence numbers [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(B), as the Claimant was not involved in the alleged investment-related sales practice violations, forgery, theft, misappropriation or conversion of funds;
3. expungement of occurrence numbers [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations or information is false;
4. an award of damages in the amount of \$1.00 from the Respondent; and
5. any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested the following:

1. expungement of occurrence numbers [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations or information is factually impossible or clearly erroneous;
2. expungement of occurrence numbers [REDACTED] his CRD records pursuant to FINRA Rule 2080(b)(1)(B), as the Claimant was not involved in the alleged investment-related sales practice violations, forgery, theft, misappropriation or conversion of funds;
3. expungement of occurrence numbers [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations or information is false;
4. an award of damages in the amount of \$1.00 from the Respondent; and
5. any and all other relief that the Arbitrator deems just and equitable.

At the hearing, Claimant withdrew his request for compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about April 19, 2018, Respondent filed a Motion to Dismiss. Claimant opposed Respondent's Motion. By Order dated May 2, 2018, the arbitrator denied Respondent's Motion to Dismiss.

On June 13, 2018, Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers related to occurrence numbers [REDACTED] of the expungement request and of their right to participate and testify at the expungement hearing, and provided the customers with a copy of the Statement of Claim.

On June 29, 2018, Claimant notified FINRA Office of Dispute Resolution that he was unable to locate the customer related to [REDACTED]

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

The Arbitrator conducted a recorded telephonic expungement hearing on August 14, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

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. Claimant's request for expungement of occurrence #s [REDACTED] [REDACTED] from his CRD records is denied.
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

**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, Keybank Capital Market, Inc. 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:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session = \$ 100.00
Pre-hearing conferences: April 27, 2018 1 session
May 2, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: August 14, 2018 1 session		
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Total Hearing Session Fees	= \$	150.00

The Arbitrator has assessed the \$150.00 hearing session fees to Claimant.

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

ARBITRATOR

Michael J. Meeusen

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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

Michael J. Meeusen
Sole Public Arbitrator

Signature Date

September 14, 2018

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