

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

---

In the Matter of the Arbitration Between:

Claimant  
[REDACTED]

Case Number: [REDACTED]

vs.

Respondent  
National Securities Corporation

Hearing Site: New York, New York

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED]: Dochter Kennedy, MBA, J.D., and Michael O’Gara, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent National Securities Corporation: Emily A. Hayes, National Securities Corporation, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: March 20, 2018.  
Claimant signed the Submission Agreement: March 20, 2018.

Statement of Answer filed by Respondent on or about: May 10, 2018.  
Respondent signed the Submission Agreement: May 10, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

In the Statement of Answer, Respondent did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

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

During the hearing, Claimant withdrew the request for compensatory damages.

In the Statement of Answer, Respondent requested that Claimant pay all forum fees and costs.

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

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

The Arbitrator conducted a recorded telephonic hearing on September 13, 2018 so that the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement.

On August 20, 2018, Claimant notified the customers in the underlying complaints of his request for expungement and of their right to participate in the expungement hearing and also provided the customers with a copy of the Statement of Claim.

The customers in the underlying complaints did not participate in the expungement hearing and did not oppose Claimant's expungement request.

The Arbitrator finds that the customers do not desire to participate in the expungement hearing and that a decision on the merits of Claimant's request can be entered.

The Arbitrator reviewed Claimant's BrokerCheck® Report and the settlement documents for Occurrence Number [REDACTED], considered the amount of payment made to the customer, 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 noted that Claimant contributed to the settlement amount as his account was charged for part of the settlement amount without his approval. Claimant did not know that Respondent negotiated a settlement with the customer until it was done at which point his account was charged one third of the settlement amount. Respondent's representative confirmed that Respondent does not notify brokers in advance, or give them a chance to object or participate in settlement discussions.

The Arbitrator noted that Claimant did not previously file claims requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, testimony and exhibits.

## 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 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 factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

The customer did not pursue his initial complaint with either Respondent or FINRA, and FINRA closed the case with no action. The customer had long experience in the industry and knew well the stock that precipitated his complaint having brought it to the firm, sold it, bought it, sold it, bought it again, and then filed a complaint when it failed.

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 factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant was secondary broker on the account of the customer who complained about fees and margin costs despite receiving trade confirms and monthly statements, which spelt them out, and twice signing letters to Respondent confirming his heavy trading and aggressive risk profile, the fees and commissions.

Respondent rejected the complaint. When the customer pursued it, Respondent's legal department settled without Claimant's knowledge or participation but charged Claimant's account for part of the cost.

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
--------------------------	------------

*\*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 National Securities Corporation 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 @ \$50.00/session	= \$ 50.00
Pre-hearing conference: July 17, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: September 13, 2018	1 session

---

Total Hearing Session Fees	= \$100.00
----------------------------	------------

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**

Pamela H. Roderick

-

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**

**/s/ Pamela H. Roderick**

**September 30, 201**

---

Pamela H. Roderick  
Sole Public Arbitrator

---

Signature Date

October 1, 2018

---

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