

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

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: New York, New York

Ameriprise Financial Services, Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED]: Dochter Kennedy, MBA, JD and Michelle Atlas, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Ameriprise Financial Services, Inc. ("Ameriprise Financial"): Howard M. Klausmeier, Esq., Ameriprise Financial Services, Inc., Troy, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: January 24, 2018.

Amended Statement of Claim filed on or about August 3, 2018.

[REDACTED] signed the Submission Agreement: January 24, 2018.

Statement of Answer filed by Respondent on or about: March 16, 2018.

Ameriprise Financial Services, Inc. signed the Submission Agreement: March 14, 2018.

**CASE SUMMARY**

Claimant asserted the following causes of action: expungement.

**RELIEF REQUESTED**

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

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 number [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations or information is false;

3. an award of damages in the amount of \$1.00 from the Respondent; and
4. any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that, in the event the Claimant is able to establish at the hearing the necessary factual basis for the expungement request, the arbitration panel (1) issue an award that recommends the expungement of the subject customer complaint from the CRD record of Claimant in accordance with the applicable FINRA rules, (2) deny all requested relief; and (3) assess all costs and fees against Claimant.

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

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

On or about August 3, 2018, Claimant filed a Motion to Amend the Statement of Claim. Respondent did not oppose the motion. By Order dated August 15, 2018, the Arbitrator granted Claimant's Motion.

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customer related to occurrence number [REDACTED] of the expungement request and of her right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The Arbitrator conducted a recorded telephonic hearing on September 18, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

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

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim, Respondent's Statement of Answer [REDACTED] BrokerCheck® Report, the award related to occurrence [REDACTED] and the testimony and evidence presented at the expungement hearing.

The Arbitrator noted that occurrence number [REDACTED] arose from a prior arbitration matter in which [REDACTED] was named a Respondent. However, the arbitrator also noted that the award was solely against Ameriprise Financial Services, Inc. [REDACTED] was not required to contribute to the award.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

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 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 was voluntarily withdrawn.
2. The Arbitrator recommends the expungement of all references to occurrence number 1 [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [REDACTED] [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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

Claimant filed this claim for the specific purpose of seeking expungement of his CRD record. By way of amended claim, Claimant asserts that a FINRA Arbitration Panel found that Claimant had not violated any FINRA rules or acted improperly in FINRA Case Number [REDACTED]. The same FINRA Arbitration Panel ordered his employer, Ameriprise Financial, to pay damages in the amount of \$67,500. In response to the Claimant's claim for expungement, Ameriprise Financial filed an Answer supporting the Claimant's request for expungement after a review of the facts of the customer case. Ameriprise Financial agrees that the CRD entry is misleading to the public and that there is no customer protection value in reporting the entry. Although the award in the customer matter was issued in 2009, the Claimant testified that the entry on his CRD record has continued to impede his business in that he must constantly explain the entry on applications for new licenses and business applications and on one occasion, an invitation to speak at an event was withdrawn as a result of the entry. The Claimant does not know how many other business opportunities were lost as a result of the CRD entry.

The entry states that:

Claimant claims that Advisor recommended she refinance her home to fund her retirement income. Claimant's claims include breach of contract, breach of fiduciary duty, unsuitability, fraudulent misrepresentation, failure to supervise,

negligence and disgorgement of commissions. Claimant seeks an unspecified amount in damages as a result of Advisor's improper and unsuitable advice.

A review of the award in the underlying case shows that the Claimant, although named as a respondent in the customer case, was not found to have engaged in any of the alleged activities and that he was not directed to contribute to the award in any manner. The award was solely made against Ameriprise.

- A. The entry is factually impossible or clearly erroneous. First, the customer resided with her daughter in another city and not at the house that was refinanced. The house was therefore an investment property (even though, as per Claimant's counsel, there is no rule prohibiting the mortgaging or selling of a home to finance retirement income). Second, Claimant recommended that the customer refinance her investment property to pay off liens that had been filed against it for unpaid property taxes on subject house and to take advantage of lower mortgage rates. With the proceeds from the mortgage refinancing, the customer wanted investments to provide for healthcare, payment of taxes, estate planning and cash availability. There is no evidence that Claimant engaged in conduct that may be described as a breach of contract, breach of fiduciary duty, unsuitability, fraudulent misrepresentation, negligence, failure to supervise or any wrongdoing that required the disgorgement of commissions. In addition, the entry is further impossible or clearly erroneous because "disgorgement of commissions" is a remedy rather than a theory of wrongdoing.
  - B. The customer claim, allegation or information is false. The record shows that the Claimant recommended a diverse portfolio of investments and products which would take care of the customer's healthcare needs, income needs and retirement income in addition to extinguishing the tax debt. The recommendations were consistent with the objectives of the customer. In addition to the Claimant, the customer also had access and used the services of an attorney for estate planning and a mortgage broker, and the Claimant coordinated with these professional advisors. According to the Claimant, the customer and her daughter, who was present during all conversations, were capable of understanding the investments and purposes and were engaged in the selection of the products. To the extent that the investment accounts lost value, the losses were attributable to the customer's failure to follow the plan, e.g., customer's excessive withdrawals, and not to the failure of the products or the recommendation of unsuitable products or other improper actions of Claimant. Accordingly, there could be no finding of breach of contract, breach of fiduciary duty, unsuitability, fraudulent misrepresentation, negligence or any conduct that would be considered a violation of sales practices rules. The finding confirms that the entry describing the customer claim and allegations against the Claimant are false.
  - C. The Claimant's CRD does not contain any other negative information. The entries concerning the customer claim are the only customer dispute entries.
3. Any and all claims for relief not specifically addressed herein are denied.



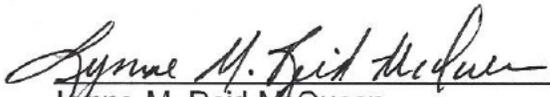
**ARBITRATOR**

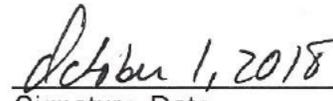
Lynne M. Reid-McQueen

- 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**

  
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Lynne M. Reid-McQueen  
Sole Public Arbitrator

  
\_\_\_\_\_  
Signature Date

**October 2, 2018**

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