

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

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In the Matter of the Arbitration Between:

Claimant

██

Case Number: ██████████

vs.

Respondent

MML Investors Services, LLC

Hearing Site: Richmond, Virginia

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D. and Erica Harris, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent MML Investors Services, LLC (“Respondent”): William P. Thornton, Jr., Esq. and Rachelle Cecala, Esq., Stevens & Lee, Reading, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on: April 4, 2018.

Claimant signed the Submission Agreement: April 4, 2018.

Statement of Answer filed by Respondent on or about: June 15, 2018.

Respondent signed the Submission Agreement: June 5, 2018.

**CASE SUMMARY**

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

In the Statement of Answer, Respondent advised that while it currently does not oppose to Claimant’s request for expungement, it objects to Claimant’s request for compensatory damages and asserted various affirmative and other defenses

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint 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 Complaint 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 she has read the pleadings and other materials filed by the parties.

On August 24, 2018, Claimant provided a copy of his notice to the customer in the Underlying Complaint ("Customer") regarding the Statement of Claim and notice of the expungement hearing. On September 5, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the Statement of Claim by certified mail.

The Arbitrator conducted a recorded telephonic hearing on September 27, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent appeared at the expungement hearing and did not oppose Claimant's request for expungement. The Customer did not appear at the expungement hearing. The Arbitrator determined that the Customer was informed of the expungement request and that he did not file a response.

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

The Arbitrator reviewed Claimant's BrokerCheck<sup>®</sup> Report.

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

The Arbitrator reviewed the Release and Indemnification Agreement which related to the settlement of a 2006 class action concerning the product in the Underlying Complaint (a life insurance policy). The Arbitrator found that it was the only settlement agreement relating to the Underlying Complaint and there is no separate or other settlement agreement with Claimant, nor did Claimant participate in or pay any money in connection with the Release and Indemnification Agreement. The Arbitrator considered the settlement amount paid to the Customer by Respondent and considered any other terms and conditions of settlement. The Arbitrator further noted that the settlement was not conditioned on the Customer not opposing Claimant's expungement request.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck<sup>®</sup> Report and Customer's June 14, 2013 Letter.

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 Complaint, 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 factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

The Customer was not issued the "wrong" life insurance policy. In a letter dated June 14, 2013, the Customer made it clear that he was dissatisfied with a feature of the product, not with Claimant or his sales practices.

In 2006, there was a class action settlement relating to the same life insurance policy that was the subject of the Underlying Complaint and the Customer received a refund of his premiums.

After his initial complaint 13 years ago in 2005, the Customer continues to be a loyal customer of Claimant.

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

*\*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

**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  
Pre-hearing conference: July 26, 2018 1 session

One (1) Hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: September 27, 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**

Jane Tam

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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**

  
\_\_\_\_\_  
Jane Tam  
Sole Public Arbitrator

10/3/18  
\_\_\_\_\_  
Signature Date

October 3, 2018  
\_\_\_\_\_  
Date of Service (For FINRA Office of Dispute Resolution office use only)