

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Banc of America Investment Services Inc.

Hearing Site: Seattle, Washington

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Doctor Kennedy, MBA, J.D., AdvisorLaw, LLC, Broomfield, Colorado and Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent Banc of America Investment Services Inc. ("Respondent"): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: January 17, 2018.
Claimant signed the Submission Agreement: January 17, 2018.

Statement of Answer filed by Respondent on or about: March 9, 2018.
Respondent signed the Submission Agreement: March 9, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a FINRA arbitration case, occurrence number ██████████ ("Underlying Arbitration") from his Central Registration Depository ("CRD") record.

In the Statement of Answer, Respondent advised that while it does not take a position as to Claimant's request for expungement, it objects to Claimant's request for compensatory damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Arbitration 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 Arbitration from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
3. Damages in the amount of \$1.00 from Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested denial of Claimant's request for an award of damages.

At the start of the expungement hearing, Claimant withdrew his damages request in the amount of \$1.00 from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 8, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customers in the Underlying Arbitration ("Customers").

On May 23, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that the Customers were served with the Statement of Claim.

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 participated in the expungement hearing and took no position regarding the expungement request. The Arbitrator found that the Customers had notice of the expungement hearing and chose not to attend.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the Customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; Statement of Claim; Statement of Answer; BrokerCheck® Report; Exhibit 4 (Customers' Asset Transition Group Directed to Form dated 10-09-03); Exhibit 5 (Customers' Brokerage Account Application dated 09-06-07); Exhibit 6 (Customers' Brokerage Account Application dated 11-03-03); Exhibit 7

(Customers' Composite Report dated 12-09-05), and Exhibit 9 (Chronology of Customers' Events).

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 occurrence number [REDACTED] from registration records maintained by the 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings 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 findings based on the following reasons:

In the fall of 2003, Claimant met with the Customers to open an account. Through personal interviews and a questionnaire, the Customers ascertained their investment objectives to be income, followed by preservation, followed by appreciation, followed by speculation.

The Customers characterized their risk tolerance as moderate. They stated that they required \$5,000.00 per month income to supplement their living expenses. Their primary goal was to establish an account with income as its primary objective, in order to achieve a withdrawal of at least \$5,000.00 a month in a sustainable account.

The Customers inherited a concentrated position in Bank of America Corporation ("BAC") shares that they were not interested in selling, despite the fact that the BAC shares represented 30% to 40% of the entire account.

Claimant had a thorough discussion with the Customers about both the risk associated with a concentrated position and the risks associated with an income-

focused portfolio. They also elected to use a traditional investment account where they would make all of the decisions independently.

During the first twelve months that the account was held with Respondent, the Customers chose to remove over \$310,000.00, which eroded the ability to sustain the Customers' desired withdrawal rate. In addition, over the next three years, Claimant repeatedly recommended diversifying the portfolio away from the 30-40% concentrated position in the BAC shares. Claimant and other personnel at Claimant's office contacted the Customers on a regular basis to review their investor profile and accounts. At no point were the Customers willing to make a change in their desired focus.

On November 30, 2009, the Customers filed the Underlying Arbitration alleging that Claimant made unsuitable investment recommendations regarding risk from 2002 to 2008 and misrepresentation. The Customers sought \$750,000.00 in compensatory damages. Respondent settled with the Customers for \$112,500.00.

The allegation of unsuitable investment recommendations is factually impossible and false because the Customers did not act on Claimant's recommendation to diversify their portfolio. Rather than accept Claimant's recommendations to sell, the Customers held on to a large concentration of BAC shares which, in the financial crisis of 2008-2009, went from a high of \$54.00 per share to approximately \$4.00 per share.

The allegation of misrepresentation is also factually impossible and false, because the Customers failed to identify or specify, in the Underlying Arbitration, any misrepresentation that Claimant made or how any alleged misrepresentation was an actual and proximate cause of the Customers' losses in their account. The Customers' losses were caused by the financial crisis of 2008 in combination with the Customers' amount of withdrawals and their insistence on maintaining their concentration of BAC shares.

Therefore, the allegations of unsuitable investment recommendations and misrepresentation in Claimant's CRD records and BrokerCheck® Report are factually impossible and false. Further, Respondent does not oppose Claimant's request 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, 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 with a single arbitrator @ \$50.00/session	= \$50.00
Pre-hearing conference: May 2, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: September 27, 2018	1 session

Total Hearing Session Fees	= \$100.00
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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

Laurel Littman Gothelf

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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


Laurel Littman Gothelf
Public
Laurel Littman Gothelf
Sole Public Arbitrator

10-3-18
Signature Date

October 4, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)