

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number ██████████

vs.

Respondent

Lincoln Financial Advisors Corporation

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, J.D., MBA, AdvisorLaw, LLC and Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondent Lincoln Financial Advisors Corporation (“Respondent”): Andrew S. Azarmi, Esq. and Thomas R. Worger, Esq., Dentons US LLP, San Francisco, California.

CASE INFORMATION

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

Statement of Answer filed by Respondent on or about: June 21, 2018.
Respondent signed the Submission Agreement: June 7, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a customer complaint, occurrence number ██████████ (“Underlying Complaint”) from his Central Registration Depository (“CRD”) records.

In the Statement of Answer, Respondent advised that it does not contest this action and stipulates to the expungement of the Underlying Complaint.

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) as the claim, allegation or information is false;
3. Compensatory 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 did not set forth a specific relief request.

At the hearing, Claimant withdrew his request for \$1.00 in damages from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 10, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customers in the Underlying Complaint ("Mr. and Mrs. K").

On October 3, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that Mr. and Mrs. K were served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 8, 2018 so 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. The Arbitrator found that Mr. and Mrs. K had notice of the expungement request and hearing and did respond in any way.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that the Underlying Complaint was not settled and there were no settlement documents to review.

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: Statement of Claim with exhibits; Respondent's Statement of Answer; and Claimant's testimony.

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 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 false.

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

In September of 2012, Mr. and Mrs. K met with Claimant to initiate an account. They requested the same investment in a variable annuity that Mrs. K's coworker had told her about.

At that time, Mr. and Mrs. K initiated the process to invest in the variable annuity which was finalized in October 2012.

During the next few months, Mr. and Mrs. K asked Claimant a few questions about the variable annuity. In January 2013, Mr. and Mrs. K requested that the variable annuity be surrendered. At that time, they also alleged that Claimant had "misrepresented" the product to them. This allegation has since appeared on Claimant's CRD and it is this allegation that Claimant seeks to have expunged.

After the complaint was made, Respondent fully investigated the complaint and found that Claimant had not misrepresented the investment and that the Underlying Complaint was without merit. They informed Mr. and Mrs. K of the result of the investigation and Mr. and Mrs. K took no further action.

In addition, Claimant, who is a Certified Financial Planner ("CFP") requested that the CFP Board investigate the Underlying Complaint as he did not want to have it on his record as a CFP. The CFP Board did investigate the complaint and also found it to be without merit.

In this telephonic hearing, Claimant gave extremely credible, reasonable and detailed testimony, for over an hour, that he had fully informed Mr. and Mrs. K of every aspect of the variable annuity, that they completely understood the investment and that he had in no way misrepresented the investment. His testimony was backed up by the information presented in his Statement of Claim submitted in this matter, including especially the appendices which contained the detailed record of the information given to Mr. and Mrs. K and the various

documents which they signed which explain the investment thoroughly and completely. Even after Mr. and Mrs. K had received the variable annuity they had a 10-day "free look" period during which time they had the opportunity examine the investment in detail and cancel it with no penalty.

Respondent did not oppose Claimant's request for expungement.

Mr. and Mrs. K were fully notified of this proceeding and received a copy of Claimant's Statement of Claim. They did not respond in any manner and did not request to appear in this hearing.

In addition, Claimant stated that the coworker of Mrs. K who initially recommended the investment is still a client of Claimant and has never complained about the investment nor mentioned Mr. and Mrs. K's complaint.

Based upon all of the above, I find that there is strong and convincing evidence that Claimant did not misrepresent the investment to Mr. and Mrs. K and that their complaint was without merit and is untrue. Therefore, it is not to the public benefit that this complaint remain on Claimant's CRD and I recommend that it be removed.

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(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: August 20, 2018	1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: October 8, 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

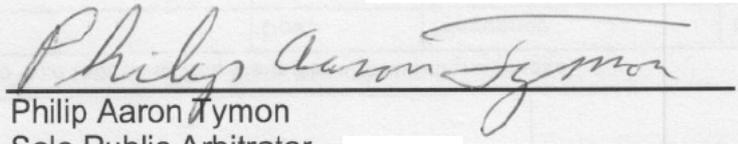
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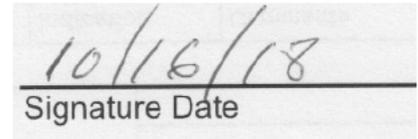
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Sole Public Arbitrator

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


Philip Aaron Tymon
Sole Public Arbitrator


Signature Date

October 16, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)