

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

Citigroup Global Markets, Inc.
Piper Jaffray & Co.

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

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

For Respondent Citigroup Global Markets, Inc. (“Citigroup”): David I. Hantman, Esq., Bressler, Amery & Ross, New York, New York.

For Respondent Piper Jaffray & Co. (“Piper Jaffray”): Denise M. Hammond, Piper Jaffray & Co., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on or about: January 31, 2018.
Claimant signed the Submission Agreement: January 31, 2018.

Statement of Answer filed by Citigroup on or about: March 28, 2018.
Citigroup signed the Submission Agreement: February 28, 2018.

Statement of Answer filed by Piper Jaffray on or about: April 10, 2018
Piper Jaffray signed the Submission Agreement: April 10, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two customer disputes (“Underlying Claims”): one customer complaint, occurrence number ██████████ and one FINRA arbitration, occurrence number ██████████, from his Central Registration Depository (“CRD”) records.

In the Statement of Answer, Citigroup advised that while it does not oppose Claimant's request for expungement, it objects to Claimant's request for monetary relief and further requests for all other fees associated with the matter to be assessed solely against Claimant.

In the Statement of Answer, Piper Jaffray deferred the assessment of the merits of Claimant's request for expungement to the Arbitrator and declined to further participate in the process.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 17, 2018, Claimant provided a copy of his notice to the customers in the Underlying Claims ("Customers") regarding the Statement of Claim and notice of the expungement hearing. On October 5, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customers had been served with the Statement of Claim. On October 11, 2018, Claimant provided a copy of his follow up notice to the Customers regarding the expungement hearing. The Arbitrator determined that the Customers were informed about the expungement request and that they did not file a reply.

On October 16, 2018, Claimant provided an Affidavit in connection to the settlement documents for occurrence number [REDACTED].

The Arbitrator conducted a recorded telephonic hearing on October 17, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Citigroup participated in the expungement hearing and did not contest the request for expungement. Piper Jaffray did not appear at the expungement hearing as previously advised. The Customers did not appear at the expungement hearing.

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

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator was unable to review the settlement documents in connection with the customer in occurrence number [REDACTED] (Ms. N). The Arbitrator found that Ms. N. submitted a written complaint to Piper Jaffray, but did not file a demand for arbitration based on the alleged unsuitability of the annuity purchased for her by Claimant. The matter was settled by Piper Jaffray but a copy of the settlement agreement was not available for review as the document had been destroyed pursuant to Piper Jaffray's document retention policy and Ms. N did not respond to the notices about the expungement proceedings. Based on the testimony and the avowals made by Piper Jaffray in Claimant's CRD, the Arbitrator found that Claimant did not participate in or contribute to the settlement, nor was the settlement conditioned on Ms. N's waiver of her rights to contest expungement.

The Arbitrator reviewed the settlement documents in connection with the customers in occurrence number [REDACTED] (Mr. and Mrs. A) and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that Claimant did not participate in or contribute the settlement and it was not conditioned upon any customers' agreement not to oppose expungement.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's exhibits 1-24.

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 Claims, occurrence numbers [REDACTED] and [REDACTED], from Claimant [REDACTED] [REDACTED] (CRD# [REDACTED]) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimant [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 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:

Occurrence Number [REDACTED] (in which Ms. N is the underlying customer)

Ms. N alleged that Claimant placed her in an unsuitable annuity that lost value. The annuity in question was guaranteed to maintain its value so long as Ms. N did not withdraw funds in excess of percentage of principal guaranteed by the issuer. Against the advice of Claimant, Ms. N did withdraw funds in excess of specified percentage while the mutual funds in the annuity were decreasing in value due to market conditions. Had Ms. N not ignored repeated warnings from Claimant and had limited her withdrawals, the value of the annuity would not have decreased despite market performance of the selected mutual funds. Therefore, the allegation of unsuitability was false and, therefore, also clearly erroneous. The evidence established that the annuity recommended by Claimant was not only suitable but was probably the most suitable investment available to satisfy the sometimes conflicting goals of Ms. N.

Occurrence Number [REDACTED] (in which Mr. and Mrs. A are the underlying customers)

Mr. and Mrs. A alleged that Claimant failed to transfer funds within six variable annuities owned by them in accordance with their instructions. With regard to five of those annuities, Claimant did follow the instructions and the funds were transferred. Therefore, as to those five, the claims was false. As to the sixth, the annuity company would not recognize Claimant's authority to order the transfer. Accordingly, Claimant attempted, without success, to contact Mr. and Mrs. A, who were on a month-long cruise, by telephone and email to notify them of the problem and to obtain the authorization needed to effectuate their instruction. Claimant did everything he could reasonably have been expected to do to comply with the instructions but was unsuccessful through no fault of his own. As it was impossible for Claimant to comply with the instruction to transfer, the allegation that he violated a duty owed to the customers was clearly erroneous and false.

2. Any and all requested relief not expressly granted is 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute.

Accordingly, as a party, Citigroup is assessed the following:

Member Surcharge = \$ 150.00

Accordingly, as a party, Piper Jaffray is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

September 10, 2018, postponement by Claimant = Waived

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: May 22, 2018 1 session

One (1) Hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: October 17, 2018 1 session

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

Marc Kalish

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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



Marc Kalish
Sole Public Arbitrator

October 22, 2018

Signature Date

October 22, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)