

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Citigroup Global Markets, Inc.

Hearing Site: Indianapolis, Indiana

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Dochter Kennedy, Esq. and Christopher Cummins, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Citigroup Global Markets, Inc. ("Respondent"): Patrick Christensen, Esq. and David I. Hantman, Esq., Bressler, Amery & Ross, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 13, 2017.

Claimant signed the Submission Agreement: December 13, 2017.

Statement of Answer filed by Respondent on or about: February 5, 2018.

Respondent signed the Submission Agreement: February 28, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of the customer complaint related to Occurrence Number ██████████ from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent denied any allegation of wrongdoing but did not oppose the request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1205896 from his CRD record, \$1.00 in compensatory damages, and other relief as the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's claim for compensatory damages and that all forum or hearing fees related to this

matter be assessed solely against Claimant.

On record at the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about June 6, 2018, Claimant filed a copy of the letter sent to the customer for Occurrence Number [REDACTED], providing him with Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. On or about August 6, 2018, Claimant filed a copy of the follow-up letter sent to the customer notifying him of a change in the hearing date and time. On or about August 7, 2018, Claimant filed an Affidavit of Follow-Up Service.

The Arbitrator conducted a recorded telephonic hearing on September 10, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing but did not contest the request for expungement. The customer did not participate in the expungement hearing.

On record at the hearing, the Arbitrator requested that Claimant make further efforts to locate the settlement documents related to Occurrence Number [REDACTED] or provide an affidavit detailing the same on or before September 21, 2018.

On or about September 20, 2018, in response to the Arbitrator's request, Claimant filed copies of the customer's Statement of Claim and settlement agreement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and 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 customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator found 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: history of transactions, timing of transfer, decedent's death, the customer's will that was more than 7 years old, the laws of testamentary disposition, and Claimant's obligation to honor the customer's written instructions (which Claimant did follow).

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of Occurrence Numbers 1205896 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 (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

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

Claimant complied with the customer's requests during the customer's lifetime. It was factually and legally impossible for Claimant to follow the terms of the customer's last will and testament during her lifetime as the will was revocable until the customer's death. In addition, upon the customer's death, no assets of the customer were in Claimant's control. Even if Claimant had control of the customer's assets at the time of her death, Claimant's firm would have been required to transfer the assets to the customer's executor, who is the person obligated to follow the terms of the will. There is no evidence that Claimant even had knowledge of the customer's estate plan.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

| | |
|------------------|-------------|
| Member Surcharge | = \$ 150.00 |
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Postponement Fees

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

July 16, 2018, postponement by Claimant = \$ 50.00

Total Postponements Fees = \$ 50.00

The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

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: April 17, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: September 10, 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

Tracy L. Allen

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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



Tracy L. Allen
Sole Public Arbitrator

10/23/18

Signature Date

October 24, 2018

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