

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Respondent"): Randi P. Spallina, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 19, 2018.
Claimant signed the Submission Agreement: February 19, 2018.

Statement of Answer filed by Respondent on or about: April 16, 2018.
Respondent signed the Submission Agreement: April 17, 2018.

CASE SUMMARY

Claimant requested expungement of a customer complaint, which resulted in a FINRA Arbitration case, occurrence number ██████████ ("Underlying Claim"), from her Central Registration Depository ("CRD") record.

In the Statement of Answer, Respondent advised that it takes no position on Claimant's request for expungement, and raised affirmative and other defenses with respect to Claimant's request for an award of damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claim from her CRD record pursuant to:

- a. FINRA Rule 2080(b)(1)(A) as the claim, allegations or information is factually impossible or clearly erroneous; and
- b. FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

At the expungement hearing, Claimant withdrew her request for compensatory damages in the amount of \$1.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 13, 2018, the Arbitrator and parties held an Initial Pre-hearing Conference. By Order that same date, the Arbitrator required Claimant to serve the customer in the Underlying Claim ("Customer") with a copy of the Statement of Claim and to invite the Customer to participate in the expungement hearing by either telephone or written submission. The Arbitrator further required Claimant to make an affirmative documentation of notice by requesting the Customer confirm, in writing, receipt of the Statement of Claim and notice of the expungement hearing.

On September 11, 2018, Claimant provided a copy of her notice to the Customer of the Statement of Claim and expungement hearing, and requested the Customer provide confirmation of the notice. On October 5, Claimant provided an Affidavit of Service advising that the Customer had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 11, 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 take a position on Claimant's expungement request. The Customer did not participate in the expungement hearing. The Arbitrator determined that the Customer had been properly served with the Statement of Claim and received due notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed the settlement documents in the Underlying Claim between the Customer and Respondent, 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, and that the Customer appears to have been made financially "whole" as a result of the settlement.

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; Claimant's BrokerCheck® Report; Federal Reserve Bank of Chicago Financial Markets Group "Explaining the Decline in the Auction Rate Securities Market" dated November 3, 2008; Wikipedia's Auction Rate Security webpage; May 31, 2006 Order of the Securities and Exchange Commission ("SEC") File No. 3-12310; Press release from the SEC that arose out of SEC Orders contained in File No. 3-12310; Letters dated June 11 and 12, 2008 from the Customer to Respondent, Berkeley Branch Manager; Letter dated July 23, 2008 from Respondent, Office of General Counsel to Customer; Statement of Claim from a FINRA arbitration case filed by Customer against Respondent in 2008; FINRA Regulatory Notice 09-12, Reporting Requirements for Settlements of Customer Disputes Involving Auction Rate Securities; and Claimant's testimony during the expungement hearing.

The parties have agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The gravamen of the Customer's allegations against Claimant, who continues to work for Respondent, was Claimant's failure to affirmatively advise the Customer that the product that she recommended to the Customer, auction rate securities, would no longer be liquid if the auction system failed.

After a review of the documentary evidence and Claimant's testimony, the Arbitrator determined that the statement in Claimant's BrokerCheck® Report is clearly erroneous. Claimant's BrokerCheck® Report states that the Customer "alleges misrepresentation and unsuitability concerning auction market securities. Damages unspecified."

The Arbitrator finds that the unsuitability claim was thoroughly and completely intertwined with the Customer's claim of misrepresentation. The Arbitrator believes the true claim was misrepresentation about the liquidity of the auction rate securities.

The Arbitrator found that the Customer's allegations against Claimant were misplaced. Respondent failed to advise Claimant of the SEC press release dated May 31, 2006, which provided in part:

"...the institution of proceedings against 15 broker-dealer firms for engaging in violative practices in the \$200 billion plus auction rate securities market."

"The SEC order (1) censures each firm; (2) requires each firm to cease and desist from committing or causing any violations and future violations of Section 17(a)(2) of the Securities Act; (3) requires each firm to pay a penalty; (4) requires each firm to provide certain disclosures of its material and current auction practices and procedures; and (5) requires each firm, not later than six months after the date of the order, to have its CEO or general counsel certify that it has implemented procedures that are reasonably designed to prevent and detect violations in the auction rate securities area."

The order requires the respondents to pay the following penalties based upon their relative market share and conduct: Bear, Stearns & Co., Inc., Citigroup Global Markets, Inc., Goldman Sachs & Co., J.P. Morgan Securities, Inc., Lehman Brothers Inc., Merrill Lynch, Pierce, Fenner & Smith Incorporated..."

This press release arose out of Administrative Proceeding File No. 3-12310, which provided in part:

"Not later than 6 months after the entry of this Order, each Respondent shall provide all of its customers who hold auction rate securities ("Holders") and the issuers of such securities ("Issuers") with a written description of the Respondent's material auction practices and procedures. In addition, commencing not later than 6 months after the entry of this Order, each Respondent shall, at or before the completion of the applicable transaction, provide all customers who are first-time purchasers, and all broker-dealers who are purchasers, of auction rate securities from the Respondent ("Purchasers") with a written description of the Respondent's material auction practices and procedures."

Claimant testified that she relied on Respondent's research department for information about auction rate securities. She further testified that Respondent's research department did not advise her of the illiquidity of auction rate securities or that auction rate securities were under a cloud of regulatory enforcement for violation of SEC rules. For this reason, Claimant did not advise the Customer of that information.

The Arbitrator also finds that the statement in Claimant's BrokerCheck® Report is misleading. In the statement, Respondent accepts no responsibility for its failure to advise of its role in violating the SEC rules.

Finally, Respondent settled the Underlying Complaint, which resulted in the Customer filing a FINRA arbitration case against Respondent. The Customer did not name Claimant as a Respondent in that case.

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: June 13, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: October 11, 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

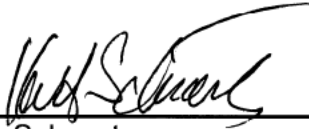
Herb Schwartz

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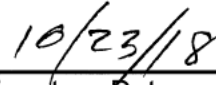
Sole Public Arbitrator

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



Herb Schwartz
Sole Public Arbitrator



Signature/Date

October 25, 2018

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