

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondent

HD Vest Investment Services

Hearing Site: Newark, New Jersey

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Dochter Kennedy, MBA, J.D. and Christopher Cummins, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent HD Vest Investment Services: Eric J. Chartan, Esq., HD Vest Investment Services, Irving, Texas.

CASE INFORMATION

Statement of Claim filed on or about: June 5, 2018.

Amended Statement of Claim filed on or about: June 20, 2018.

[REDACTED] signed the Submission Agreement: June 5, 2018.

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

HD Vest Investment Services signed the Submission Agreement: July 9, 2018.

CASE SUMMARY

In the Statement of Claim and the Amended Statement of Claim, Claimant asserted the following cause of action: expungement.

Respondent did not contest Claimant's claims.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of occurrence number [REDACTED] from his CRD records; compensatory damages in the amount of \$1.00; and 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.

Respondent did not appear at the evidentiary hearing. By correspondence dated September 12, 2018, Respondent filed a waiver of appearance for the October 19, 2018 expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on October 19, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaint (occurrence number [REDACTED] with notice of his expungement request and notice of the customers' right to participate and testify at the expungement hearing. The customers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, considered the amount of payments made to the customers in the underlying complaint, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the underlying customers not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that [REDACTED] 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: the pleadings, Claimant's expungement hearing exhibits 1-7, and Claimant's testimony.

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. Claimant's request for compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons: The underlying claim involves a failure to return monies to an IRA in a timely manner and the tax consequences that ensued. The claim against [REDACTED] is clearly erroneous because he was not involved in the IRA borrowing and because the clients apparently did not intend to return the funds on time. In addition, Claimant was not involved in the alleged investment related sales practice violation, forgery, theft, misappropriation or conversion of funds because none of these occurred. Finally the claim is false since [REDACTED] was not involved with the IRA borrowing. It should be noted that Respondent HD Vest Investment Services supports the expungement and that Claimant did not contribute to the settlement of the underlying matter.

3. Any and all claims for relief not specifically addressed herein are 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
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent HD Vest Investment Services 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: August 30, 2018	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: October 19, 2018	1 session	
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Total Hearing Session Fees	= \$	100.00

The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.


ARBITRATOR

Edward W. Morris, Jr.

- 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



Edward W. Morris, Jr.
Sole Public Arbitrator

10/31/18

Signature Date

October 31, 2018

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