

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Eric Litow, Esq., Dochter Kennedy, MBA, JD, AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Sarah K. Yates, Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 15, 2018.

Claimant signed the Submission Agreement: May 15, 2018.

Statement of Answer filed by Respondent on or about: July 13, 2018.

Respondent signed the Submission Agreement: July 13, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of occurrence number [REDACTED], compensatory damages in the amount of \$1.00, and any and all relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent took no position as to Claimant's request for expungement and requested Claimant's request for damages be denied.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded telephonic hearing on October 25, 2018 so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement.

The customer did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]. Claimant testified that counsel tried to obtain the settlement documents by way of discovery, but Respondent did not have a copy. Based on the BrokerCheck® Report for [REDACTED] and his testimony the Arbitrator determined that Claimant did not contribute to the settlement. The Arbitrator noted that he could not make a determination whether the settlement was not conditioned on the customer not opposing the request for expungement. Based on Claimant's credible testimony that he followed the customer's instructions in managing the account, the Arbitrator granted the request for expungement

The Arbitrator noted that Claimant [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: Claimant's testimony.

AWARD

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

1. Claimant's claim 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 finding of fact:

The claim, allegation, or information is false.

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

The customer alleged that the Claimant acted without authority to sell securities on February 25, 2002. The Claimant testified credibly that the trades were authorized by the customer in order to create more income to pay for the long term care costs to take care of her husband.

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, Merrill Lynch, Pierce, Fenner & Smith Inc. 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 15, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: October 25, 2018	1 session

Total Hearing Session Fees	= \$100.00
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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

Howard D. Jacob

Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature



Howard D. Jacob
Sole Public Arbitrator

10/31/18

Signature Date

October 31, 2018

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