

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Cetera Advisor Networks LLC

Hearing Site: Honolulu, Hawaii

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Cetera Advisor Networks LLC ("Respondent"): Christina Vourakis, Esq., Cetera Financial Group, El Segundo, California.

CASE INFORMATION

Statement of Claim filed on: February 23, 2018.

Claimant signed the Submission Agreement: February 23, 2018.

Statement of Answer filed by Respondent on or about: April 17, 2018.

Respondent signed the Submission Agreement: April 18, 2018.

CASE SUMMARY

Claimant requested expungement of reference to a customer complaint, occurrence number ██████████ ("Underlying Complaint") from his Central Registration Depository ("CRD") record.

In the Statement of Answer, Respondent advised that while it does not oppose Claimant's request for expungement, it requests that the Arbitrator deny Claimant's request for monetary damages and allow Respondent to attend the expungement hearing telephonically.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint 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 Complaint 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 Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. A statement from the Arbitrator on the issue of whether to order recommending expungement of the Underlying Complaint from Claimant's CRD record in the form required by FINRA Rule 2080;
2. Denial of Claimant's request for \$1.00 in compensatory damages; and
3. An order that all forum costs and fees are assessed against Claimant.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 2, 2018, Claimant provided a copy of his notice to the customer in the Underlying Complaint ("Customer") regarding the Statement of Claim and notice of the expungement hearing scheduled for October 17 and 18, 2018. On July 5, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the Statement of Claim.

On October 1, 2018, the Arbitrator conducted a telephonic pre-hearing conference with the parties. By Order dated the same day, the Arbitrator ruled that the expungement hearing would be held only on October 17, 2018, and ordered Claimant to serve the Customer with the revised expungement hearing schedule. The order further stated that Respondent had indicated that it does not expect to appear at the expungement hearing.

On October 2, 2018, Claimant provided a copy of his follow up notice to the Customer regarding the expungement hearing. On October 8, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the follow up notice of the expungement hearing.

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. Respondent did not appear at the expungement hearing as previously indicated. The Customer also did not appear at the expungement hearing. The Arbitrator found that the Customer was notified twice about the expungement hearing and chose not to participate.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator reviewed the settlement documents from the Underlying Complaint and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that Claimant contributed \$2,500 (his insurance deductible) to the \$12,500 settlement amount. The Arbitrator noted that the evidence showed that the Underlying Complaint was resolved for purposes of expediency and cost.

The Arbitrator further found that the settlement agreement was not conditioned upon the Customer's agreement not to oppose expungement.

The Arbitrator noted that Claimant did not previously request expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Exhibits attached to Claimant's Statement of Claim, Claimant's oral testimony and Claimant's BrokerCheck® Report.

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 Complaint, occurrence number [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 false.

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

Based on the evidence presented, the Customer was familiar with the risks involved and knowingly accepted them. The evidence further showed that the Customer would have benefited from Claimant's original recommendation had he held the position.

The evidence showed that Claimant has been in practice for 31 years and has only this one complaint against him. The current size and nature of his practice is further evidence of Claimant's long-term reputation among clients and others.

Furthermore, the Customer declined two opportunities to appear at the expungement hearing.

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$50.00/session	= \$ 100.00
Pre-hearing conferences: June 13, 2018	1 session
October 1, 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	= \$150.00
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The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Terry M. Lloyd

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



Terry M. Lloyd
Sole Public Arbitrator

October 31, 2018

Signature Date

State of _____ ss:

County of _____

On this _____ day of _____, _____, before me personally appeared _____ to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Notary Public, State of _____

My commission expires: _____

Please see attached Acknowledgment Certificate

November 1, 2018

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

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of Contra Costa)

On October 31, 2018 before me, V.A. Chakalian (Notary Public),
(here insert name and title of the officer)

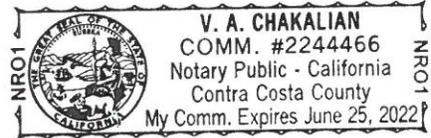
personally appeared Terry M. Lloyd

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



(Seal)

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Award
FINRA Office of Dispute Resolution,
containing 6 pages, and dated October 31, 2018.

The signer(s) capacity or authority is/are as:

- Individual(s)
 Attorney-in-Fact
 Corporate Officer(s) _____ Title(s)
 Guardian/Conservator
 Partner - Limited/General
 Trustee(s)
 Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
 form(s) of identification credible witness(es)

Notarial event is detailed in notary journal on:
Page # _____ Entry # _____

Notary contact: _____

Other

Additional Signer(s) Signer(s) Thumbprint(s)
