

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Lincoln Financial Securities Corporation

Hearing Site: Washington, D.C.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ Dochter Kennedy, MBA, J.D. and Harris Freedman, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Lincoln Financial Securities Corporation: Kyle Osting, Lincoln Financial Group, Fort Wayne, Indiana.

CASE INFORMATION

Statement of Claim filed on or about: January 11, 2018.

██████████ signed the Submission Agreement: January 11, 2018.

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

Lincoln Financial Securities Corporation signed the Submission Agreement: February 13, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Respondent did not object to Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of occurrence numbers ██████████ and ██████████ 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.

In the Statement of Answer, Respondent Lincoln Financial Securities Corporation did not contest the Claimant's claims and stipulated to expungement of the underlying customer complaints.

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 23, 2018 so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement of his CRD records.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaints (occurrence numbers [REDACTED] and [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.

At the hearing, Claimant withdrew his request for compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for Claimant [REDACTED].

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of occurrence numbers [REDACTED] and [REDACTED].

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, party submissions; Claimant's testimony, and Claimant's BrokerCheck® Report.

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 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 factually impossible or clearly erroneous.

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

The customer alleged he believed he had applied for the retirement income choice rider with his variable annuity contract in May 2006 and the rider had an annual step up of the greater of 5% or the market value each year. The rider associated with his annuity contract, however, is the 5 for life rider that provides a 5% income guarantee and has a 3 year step up in value option if the market value increases. The retirement income choice rider that the customer subsequently expressed a preference for did not become available until two years after the purchase of his variable annuity contract. Consequently, the customer could not have credibly believed that he had purchased the retirement income choice rider with his variable annuity contract. The Claimant provided credible oral testimony at the expungement hearing together with ample written evidence to support his case. The complaint filed by the customer was investigated by Respondent which found no sales practice violation by Claimant and no fault with his actions in this case, and dismissed the complaint. The customer was provided adequate notice of the expungement hearing and declined to participate in the hearing. Respondent supported Claimant's request for expungement. Accordingly, the Arbitrator finds that the basis of the complaint was through no fault of Claimant and thus the claim, allegation, or information is factually impossible or clearly erroneous.

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; and the claim, allegation, or information is false.

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

The owner of a universal life insurance policy purchased in 2007 alleged it was solicited as an investment with the intent to later sell the policy to investors in the secondary market for substantial gains. The owner further alleged that he was misled and received inadequate disclosure. In his application to purchase the flexible premium adjustable life insurance policy, the customer specifically answered in the negative to the following written questions: "[h]ave you been involved in any discussion about the possible sale or assignment of this policy to a life settlement, viatical or other secondary market provider," and "[h]ave you in the past two years sold a policy to a life settlement, viatical or other secondary market provider?" The testimony indicated that extensive discussions occurred over several months between the customer and Claimant prior to the issuance of the policy which confirmed the foregoing written assertions of the customer. The complaint filed by the customer was investigated by Respondent which found no sales practice violation by Claimant and no fault with his actions in this case, and dismissed the complaint. The Claimant provided credible oral testimony at the expungement hearing and ample written evidence to support his case. The customer was provided adequate notice of the expungement hearing and declined to participate. In the end, Claimant's claim was uncontested by the customer, and Respondent supported Claimant's request for expungement. Accordingly, the Arbitrator finds that the basis of the complaint was through no fault of Claimant and thus the claim, allegation, or information is factually impossible, clearly erroneous, and false.

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 Lincoln Financial Securities Corporation 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: May 22, 2018		1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: October 23, 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

Douglas Earl McLaren

- 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

/s/ Douglas E. McLaren
Douglas Earl McLaren
Sole Public Arbitrator

11/01/2018
Signature Date

November 2, 2018

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