

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number: [REDACTED]

vs.

Respondent
B. C. Ziegler and Company

Hearing Site: Milwaukee, Wisconsin

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Dochter Kennedy, Esq. and Harris Freedman, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent B. C. Ziegler and Company ("Respondent"): Jonathan W. Hackbarth, Esq., Quarles & Brady LLP, Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: April 11, 2018.
Claimant signed the Submission Agreement: April 11, 2018.

Statement of Answer filed on or about: June 4, 2018.
Respondent signed the Submission Agreement: May 31, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint, Occurrence Number [REDACTED], from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent took no position regarding Claimant's request for expungement but denied any wrongdoing and asserted affirmative defenses and other defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement, 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 did not request any relief.

At the hearing, Claimant orally withdrew any claim for monetary damages from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about August 28, 2018, Claimant filed a copy of the letter sent to the customer for Occurrence Number [REDACTED], providing him with the Statement of Claim, the hearing date and time, and the option to participate in the expungement hearing. On or about September 5, 2018, Claimant filed an Affidavit of Service advising that the customer had been served with the Statement of Claim. On or about September 10, 2018, Claimant provided the customer with notice of the rescheduled date and time of the expungement hearing and the option to participate in the expungement hearing. On or about October 10, 2018, Claimant filed an Affidavit of Service advising that the customer had been served with notice of the rescheduled expungement hearing.

On or about September 26, 2018, Claimant provided notice from Respondent's counsel that the settlement agreement, resolving the underlying FINRA arbitration case between Respondent and the customer, could not be produced due to confidentiality. In the notice, Respondent's counsel confirmed that Claimant was not a party to the settlement agreement and did not make any payments to either Respondent or the customer in connection with that settlement.

The Arbitrator conducted a recorded, telephonic hearing on October 1, 2018, for the presentation of testimony and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing. The customer did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator heard testimony of payments made by Respondent to the customer, but did not consider the payment to be a determinative factor in deciding to recommend expungement. In addition, the Arbitrator noted that, based on the parties' representations, Claimant did not contribute to the settlement amount.

On or about November 5, 2018, Respondent submitted the settlement agreement to the Arbitrator for in-camera review. The Arbitrator reviewed the settlement documents and considered the 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 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: Claimant's testimony, the subscription suitability questionnaire

indicating the net worth of the customer, and Respondent's letter stating that Claimant did not contribute to the settlement with the customer.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submission, 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 the 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 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 allegations are factually impossible and clearly erroneous. Claimant was not a supervisor or a fiduciary as alleged. In addition, the claims are also false. There was no showing of any misrepresentation, negligence, or fraud.

The customer owned the first offering of the disputed product before Claimant even joined the firm. Moreover, Claimant limited the dollar amount the customer could invest because of the high risk. The real estate market crashed causing the loss of money in the investment. Claimant made no misrepresentations to this customer who did not want to invest in "vanilla mutual funds" as recommended by Claimant.

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

**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 is assessed the following:

Member Surcharge = \$ 150.00

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: August 27, 2018 1 session

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

Total Hearing Session Fees = \$ 100.00

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

Leon Fox

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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

/s/Leon Fox

Leon Fox
Sole Public Arbitrator

11/09/2018

Signature Date

November 9, 2018

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