

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Trustmont Financial Group, Inc.

Hearing Site: Tampa, Florida

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, Esq. and Eric Litow, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Trustmont Financial Group, Inc. (“Respondent”): William T. Krzton, Esq., Tarentum, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on or about: January 22, 2018.  
Claimant signed the Submission Agreement: January 22, 2018.

Statement of Answer filed on or about: March 21, 2018.  
Respondent signed the Submission Agreement: March 21, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of two customer complaints (“Customer Complaints”) from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent objected to the Statement of Claim to the extent it implied that Respondent engaged in wrongdoing. Respondent did not oppose Claimant’s request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers ██████████ and ██████████, an award of \$1.00 in compensatory damages, and any and all other relief the Arbitrator deems just and appropriate.

In the Statement of Answer, Respondent requested that Claimant’s request for \$1.00 in

damages be denied and that all forum fees and reasonable attorneys' fees be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

Claimant submitted a copy of the Statement of Claim and notice of the expungement hearing to the customers in the Customer Complaints (the "Customers"), advising the Customers' of their opportunity to participate in the expungement hearing, on or about September 28, 2018.

Claimant submitted an Affidavit of Service of the Statement of Claim to the Customers, dated October 15, 2018.

The Arbitrator conducted a recorded, telephonic hearing on November 1, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing but did not contest the request for expungement. The Customers did not participate in the expungement hearing.

On the record at the expungement hearing, Claimant moved to withdraw his request for \$1.00 in damages ("Motion"). Respondent concurred in Claimant's Motion. On the record at the hearing, the Arbitrator granted Claimant's Motion.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator found that there were no settlements related to the Customer Complaints. Accordingly, the Arbitrator did not review any settlement documents.

The Arbitrator found that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Behringer Harvard REIT Subscription Agreements executed by the Customers and Claimant's testimony.

### **AWARD**

After considering the pleadings, the testimony, and the 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 Occurrence Numbers [REDACTED] and [REDACTED] from 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 finding of fact with respect to Occurrence Numbers [REDACTED] and [REDACTED]:

The claim, allegation, or information is factually impossible or clearly erroneous;

With respect to Occurrence Numbers [REDACTED] and [REDACTED], the Arbitrator has made the above Rule 2080 finding based on the following reasons:

The Customers both signed and initialed subscription agreements indicating that they had read and agreed to the terms of the prospectus for the Behringer Harvard REIT at issue, which prospectus indicated, according to testimony by Claimant, that said REIT could not easily be liquidated.

2. Pursuant to the parties' agreement during the hearing, Claimant will pay to Respondent the sum of \$1,300.00 in attorneys' fees.
3. 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 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
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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:

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: November 1, 2018      1 session	
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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.

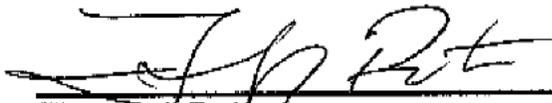
**ARBITRATOR**

Thomas J. Patka

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**



Thomas J. Patka  
Sole Public Arbitrator

11/9/2018  
Signature Date

11/09/18

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