

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Securities Service Network, LLC

Hearing Site: San Diego, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Broomfield, Colorado and Michelle Atlas, Esq., HLBS Law, Westminster, Colorado.

For Respondent Securities Service Network, LLC (“Respondent”): Ronald T. Klimas, EVP, Securities Service Network, LLC, Knoxville, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on: March 26, 2018.

Claimant signed the Submission Agreement: March 26, 2018.

Statement of Answer filed by Respondent on: May 7, 2018.

Respondent signed the Submission Agreement: June 7, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of two customer complaints (“Underlying Complaints”): occurrence numbers ██████████ and ██████████, from his Central Registration Depository (“CRD”) records.

In the Statement of Answer, Respondent supported Claimant’s request for expungement and noted its intent to not participate in the expungement hearing.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

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

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

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

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

On September 25, 2018, Claimant provided a copy of his notice to the customers in the Underlying Complaints ("Customers") regarding the Statement of Claim and notice of the expungement hearing. On October 16, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customers had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 25, 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 in the Statement of Answer. The Customers also did not appear at the expungement hearing. The Arbitrator found that the Customers had notice of the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck<sup>®</sup> Report.

The Arbitrator found that the Underlying Complaints were not settled and therefore there were no settlement agreements to review.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck<sup>®</sup> Report and Claimant's oral testimony.

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 Complaints, occurrence numbers [REDACTED] and [REDACTED], from Claimant [REDACTED] (CRD# [REDACTED]) registration records maintained by the CRD, 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:

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:

**Occurrence Number [REDACTED] (in which Mr. and Mrs. V are the underlying customers)**

Claimant credibly testified that Mr. and Mrs. V, husband and wife, provided him with a standing order to maintain a designated level of liquidity in Mr. V's IRA to fund a set monthly withdrawal. Claimant's counsel attested that she sought a copy of the standing order through discovery, but this request was not met with success.

Claimant credibly testified that he received this order shortly after Mr. and Mrs. V became clients in 1998 and that he acted on it until Claimant left the employ of Respondent in August 2008. This is 6 months prior to the event end date noted in Mr. and Mrs. V's complaint dated December 10, 2008.

Mr. and Mrs. V alleged that "liquidations took place without prior authorization between November 2006 and December 2008." Respondent investigated the complaint and rejected it as unfounded. Mr. and Mrs. V took no further action.

Mr. and Mrs. V's allegation strains credulity. If the liquidations took place between August 2008 and December 2008, Claimant clearly had no part in the subject issue as he had left the employ of Respondent in August 2008.

**Occurrence Number [REDACTED] (in which Ms. T is the underlying customer)**

On March 2, 2009, more than six months after Claimant had left Respondent's employ, Ms. T alleged that Claimant "was negligent in failing to act on her instructions to liquidate her accounts to move her funds to money market on June 12, 2008."

Claimant credibly testified that he received no such instructions. Crediting Ms. T's allegation would require the Arbitrator to believe that, for nine months, from the time of the liquidation instruction to the date of the complaint, Ms. T did not notice the failure to liquidate all of her investments. The Arbitrator did not find that to be credible.

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:

One (1) Pre-hearing session with a single arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: August 6, 2018 1 session	

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

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Total Hearing Session Fees	= \$ 100.00
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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**

Mark R. Lee

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**



\_\_\_\_\_  
Mark R. Lee  
Sole Public Arbitrator

11/13/18

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
November 14, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)