

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

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In the Matter of the Arbitration Between:

Claimant

██

Case Number: ██████████

vs.

Respondent

Piper Jaffray & Co.

Hearing Site: Minneapolis, Minnesota

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

For Respondent Piper Jaffray & Co. (“Respondent”): Ann McCague, Piper Jaffray & Co., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: December 13, 2017.  
Claimant signed the Submission Agreement: December 13, 2017.

Statement of Answer filed on or about: February 5, 2018.  
Respondent signed the Submission Agreement: February 2, 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 stated that it did not oppose Claimant’s request for expungement, but deferred an assessment of the merits of Claimant’s request to the Arbitrator.

**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 did not request relief.

### **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, dated September 26, 2018.

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

Claimant submitted a follow-up notice of the expungement hearing to the customers in the Customer Complaints, providing additional information about the expungement hearing, dated October 18, 2018.

The Arbitrator conducted a recorded, telephonic hearing on October 29, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. The Customers did not participate in the expungement hearing. Respondent also did not participate in the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator found that there was no settlement, with respect to Occurrence Number [REDACTED]. Accordingly, the Arbitrator did not review any settlement document for Occurrence Number [REDACTED].

The Arbitrator reviewed the settlement document, with respect to Occurrence Number [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator found that the settlement was not conditioned on Claimant not opposing the request for expungement. The Arbitrator also found that Claimant did not contribute to the settlement amount.

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

In recommending expungement of both Customer Complaints, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, the Statement of Claim and the attached Exhibits 1-13, and Exhibits 14-16.

### **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. Claimant's request for compensatory damages is denied.

2. The Arbitrator recommends the expungement of all references to 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"), with respect to Occurrence Number 1171818, 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:

With respect to Occurrence Number [REDACTED], the overwhelming weight of the evidence presented shows that the customer visited Claimant and Respondent in or around December 1998 on referral from the customer's daughter (who remains a client of Claimant and who submitted written evidence in favor of Claimant). The customer selected the portfolio which was consistent with her investment objectives and risk profile. Documents produced by Claimant, as exhibits, clearly show the customer's reduction in account value was not caused by or in any way contributed to by any action or failure to act by Claimant or any person associated with Respondent. An internal investigation occurred after a complaint was filed by the customer. The investigation found no wrongdoing. The customer's request for reimbursement was denied and no arbitration or other action was taken. On these undisputed facts, the Arbitrator determined the claims/allegations were false and/or clearly erroneous and expungement is warranted.

Pursuant to Rule 13805 of the Code, with respect to Occurrence Number [REDACTED], 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:

With respect to Occurrence Number [REDACTED], in particular, in the Statement of Claim filed by the customer in her arbitration case, the customer asserts that

Claimant and Respondent did her a disservice by selling her Class B shares. To the contrary, Claimant discussed the differences with the customer and, because of her familiarity with different types of shares, she chose Class B shares because she had no desire to pay "up front" fees. The customer made this informed decision, not Claimant.

The customer also alleged "churning" of her account, in fact, based on the testimony of Claimant and all other objective evidence, just the opposite was true. There was very little purchase and sale activity in these accounts. Additionally, during the expungement hearing, Claimant testified that, contrary to the underlying Statement of Claim, the customer was not an unsophisticated investor. In fact, her history suggested otherwise. Furthermore, any losses in the portfolio were due, in whole or in part, to the fall of 2000 market downturn, which was one of the worst in United States market history. The content of the customer's portfolio was not the result of actions by Claimant. Every holding contained in her account(s) was chosen or authorized by her.

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 persons 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: June 1, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: October 29, 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**

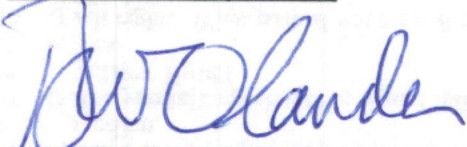
Brett W. Olander

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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**



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Brett W. Olander  
Sole Public Arbitrator

11-15-2018

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

11/15/18

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