

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

HD Vest Investment Services

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Christopher Cummins, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent HD Vest Investment Services ("HD Vest"): Eric Chartan, Esq., HD Vest Financial Services, Irving, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: June 6, 2018.

████████████████████ signed the Submission Agreement: June 6, 2018.

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

HD Vest Investment Services signed the Submission Agreement: July 9, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Respondent does not contest the present action.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of occurrence number ██████████ 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 stipulates to expungement of the underlying customer claim. Respondent does not oppose Claimant's relief requests.

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

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

By correspondence dated September 12, 2018, Respondent filed a waiver of appearance at the final hearing. Respondent supports Claimant's request for expungement of his CRD records.

The Arbitrator conducted a recorded telephonic hearing on October 30, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaint (occurrence number [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.

Respondent did not participate in the expungement hearing.

At the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, considered the amount of payments made to the underlying customers, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the underlying customers not opposing the request for expungement.

The Arbitrator noted that [REDACTED] 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: the pleadings, Claimant's BrokerCheck® Report, Claimant's notes, the Settlement Agreement, Claimant's testimony, and account statements.

### **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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Claimant served as the investment advisor and accountant for the customers. Claimant's expungement request was filed following the settlement of a case filed in the United District Court for the Southern District of New York against Claimant, another individual, and Claimant's accounting firm (the "District Court Action"). Claimant's broker-dealer, Respondent HD Vest, was not named as a party to the District Court Action. According to the Claimant, the crux of the customers' claims in the District Court Action was that the Claimant erred in preparing the customers' tax returns and that the error caused the customers to incur substantial interest and penalties. The customers allegedly demanded damages in the amount of \$15,000,000.00 in their complaint. Claimant testified at the expungement hearing that the customers did not raise customer-investment related claims in the District Court Action. Although Claimant did not provide a copy of the complaint from the District Court Action to the Arbitrator, his BrokerCheck Report includes a statement that HD Vest determined that the settlement related only to tax/accounting services provided by Claimant, not investment-related services. During the hearing, Claimant acknowledged and explained the error. There is no evidence (including from the manner in which HD Vest prepared Claimant's BrokerCheck Report) that the customers raised an investment-related claim against Claimant or Respondent HD Vest. The District Court Action was settled and Claimant contributed towards the overall settlement (the accounting firm's insurance carrier also paid a portion). The settlement is substantial but, as stated on Claimant's BrokerCheck Report, represented the insurance carrier's decision based upon factors including the reasonable approximation of the litigation costs that might have been incurred for defending the District Court Action.

2. 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, HD Vest Investment Services 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: August 28, 2018                      1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: October 30, 2018                              1 session	

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Total Hearing Session Fees	=\$ 100.00
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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**

Louis H. Miron

- 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**



\_\_\_\_\_  
Louis H. Miron  
Sole Public Arbitrator

11/16/18

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

**November 16, 2018**

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