

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Pacific West Securities, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

Respondent Pacific West Securities, Inc. did not appear.

CASE INFORMATION

Statement of Claim filed on or about: March 27, 2018.

████████████████████ signed the Submission Agreement: March 27, 2018.

Respondent did not file a Statement of Answer or an executed Submission Agreement.

CASE SUMMARY

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two settled customer arbitration claims (Case No. ██████████ Occurrence ██████████ and Case No. ██████████/Occurrence No. ██████████) recorded on Claimant's CRD records. The dispute in both Occurrence Nos. involved the suitability of a 1031 Exchange to defer capital gains taxes on the sale of property and the reinvestment of the proceeds in tenant-in-common ("TIC") investments.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence Nos. ██████████ and ██████████ from his CRD records; \$1.00 in compensatory damages; and such other relief deemed appropriate by the Arbitrator.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

Respondent did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of Claimant, the Arbitrator determined that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

On or about October 5, 2018, Claimant filed with FINRA Office of Dispute Resolution proof of service upon the underlying customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] of notice of the date and time of the upcoming telephonic expungement hearing and the customers’ right to participate therein. The customers did not submit written responses thereto.

On or about October 16, 2018, Claimant filed with FINRA Office of Dispute Resolution an Affidavit of Service upon the customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] of the Statement of Claim in this matter.

The Arbitrator conducted a recorded telephonic hearing on November 13, 2018, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Neither Respondent nor the customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] participated in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant contributed to the settlement amounts, but only a small fraction of the amounts requested by the customers and only for business purposes.

The Arbitrator noted that Claimant previously requested expungement in connection with Occurrence No. [REDACTED], but the request was withdrawn prior to a ruling by the panel in that matter.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement in connection with Occurrence No. [REDACTED].

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: new account forms; DPP Disclosure; purchaser questionnaire; broker/dealer representations and warranties; acknowledgement regarding offerings; 1031 Exchange Information and Authorization Agreement; correspondence; Claimant's BrokerCheck Report; and Claimant's credible testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic 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 Nos. [REDACTED] and [REDACTED] from registration records maintained by the CRD for Claimant (CRD # [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 findings of fact regarding both Occurrence Nos.:

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:

Occurrence No. [REDACTED]

The customers came to Claimant because they wanted to invest in a Section 1031 Exchange. In October 2007, they attended a seminar presented by Claimant and Respondent. The customers contacted Claimant and eventually executed various documents with Respondent. These included: new account forms that showed 50 years of investment experience; acknowledgement that the investment "carries risk of loss of principal..."; acknowledgment of Offering for 1031 Exchange; and customer acknowledgements as to receipt and understanding of the prospectus. The customers also had discussions with Claimant regarding the adequacy and risk of the investments. The investments were made in three properties around July 2008. Claimant frequently communicated with the customers. When Claimant left Respondent's employment, the customers stayed with Respondent for a while. Claimant does not know when the customers left Respondent, but it was before they filed their complaint in 2014. Claimant has had no contact with the customers, other than the settlement of the complaint.

The market collapse, especially as to the impact on real estate investments, was unforeseeable and very unusual. The investments before the market crash were suitable and proper for the risk and objectives of the customers. There had been no complaints or issues with the investments.

Occurrence No. [REDACTED]

The customers came to Claimant because they wanted to invest in a Section 1031 Exchange. After receiving marketing materials, the customers contacted Claimant and invested in two TIC investments. Similar to the customers in Occurrence No. [REDACTED], the customers executed various documents with Respondent. These included: new account forms that showed 30 years of investment experience; acknowledgement that the investment "carries risk of loss of principal..."; acknowledgment of Offering for 1031 Exchange; and customer acknowledgements as to receipt and understanding of the prospectus. The customers also had discussions with Claimant regarding the adequacy and risk of the investments. Additionally, the customers invested in another property in 2009 and filed their complaint in 2015.

The market collapse, especially as to the impact on real estate investments, was unforeseeable and very unusual. The investments before the market crash were suitable and proper for the risk and objectives of the customers. There had been no complaints or issues with the investments.

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(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

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: July 16, 2018 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: November 13, 2018 1 session	

Total Hearing Session Fees	= \$ 100.00
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The Arbitrator has assessed the total \$100.00 in hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATOR

Kimberly A. Gilmour

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



Kimberly A. Gilmour
Sole Public Arbitrator

11/16/18
Signature Date

November 16, 2018

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