

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

WaMu Investments, Inc.

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., and Eric Litow, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent WaMu Investments, Inc. (“Respondent”): Richard B. Davis, Esq., JPMorgan Chase Legal Department, Chatsworth, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2018.  
Claimant signed the Submission Agreement: February 7, 2018.

Statement of Answer filed by J.P. Morgan Securities, LLC, successor to Respondent, (“J.P. Morgan”) on or about: June 18, 2018.  
J.P. Morgan signed the Submission Agreement: June 18, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of the following customer disputes (“Underlying Claims”) from his Central Registration Depository (“CRD”) records: a civil litigation, occurrence number ██████████; and a complaint, occurrence number ██████████.

In the Statement of Answer, J.P. Morgan denied any wrongdoing and advised that it does not oppose Claimant’s request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims 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 Claims of from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
  3. Compensatory damages in the amount of \$1.00 from Respondent; and
  4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, J.P. Morgan did not set forth a specific relief request.

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

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

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

In the Statement of Answer, J.P. Morgan advised that it was the successor to Chase Investment Services Corp, which was the successor to Respondent.

On June 29, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customers in occurrence number [REDACTED] ("Mr. and Mrs. R").

On July 5, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that Mr. and Mrs. R were served with a copy of the Statement of Claim.

On October 12, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served four of the nine customers in occurrence number [REDACTED] ("Mr. JL", "Ms. W", "Mr. CS", and "Ms. C").

On the same date, Claimant submitted the following relating to the remaining five customers in occurrence number [REDACTED]: Death Records for three of the customers ("Mr. and Mrs. Y", and "Ms. S"); an obituary for one of the customers ("Mr. RL"); and an affidavit signed by Claimant's counsel advising that Claimant's counsel has exhausted all avenues to obtain the information needed to serve one customer ("Mr. WS") with the Statement of Claim.

Hereinafter, Mr. and Mrs. R, Mr. JL, Ms. W, Mr. CS, Ms. C, Mr. and Mrs. Y, Ms. S, Mr. RL, and Mr. WS, are collectively referred to as "Customers."

The Arbitrator conducted a recorded telephonic hearing on October 18, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as noted in J.P. Morgan's Statement of Answer, did not oppose Claimant's request for expungement. The Customers also did not participate in the expungement hearing. The Arbitrator found that Claimant's efforts to serve the Customers were sufficient.

On October 25, 2018, the Arbitrator ordered J.P. Morgan to use reasonable efforts to locate and produce the settlement document in occurrence number [REDACTED], or if efforts to locate the settlement document were unsuccessful, J.P. Morgan should provide an affidavit to attest to the efforts to locate the settlement document and its inability to do so.

On November 6, 2018, J.P. Morgan submitted an affidavit signed by the Vice President and Operations Manager of the Wealth Management Executive Office of JP Morgan Chase Bank, N.A. advising that he had completed a search and could not locate the settlement document.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator found that there was no settlement in occurrence number [REDACTED] and therefore no settlement documents for him to review.

The Arbitrator noted that Respondent reached a confidential settlement agreement with the customers in occurrence number [REDACTED] and that Claimant was not a party to the settlement agreement and did not have a copy of the settlement agreement. Based on the affidavit submitted by J.P. Morgan attesting to its unsuccessful efforts to locate the settlement agreement, the Arbitrator found that despite reasonable efforts the parties could not locate the settlement agreement.

Based on Claimant's testimony and the BrokerCheck® Report, the Arbitrator noted that Claimant was not asked to contribute to the settlement and Claimant does not know the terms of the settlement, amount of the settlement, or whether the settlement was conditioned on the customers not opposing the request for expungement.

The Arbitrator noted 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: testimony of Claimant; Claimant's BrokerCheck® Report, and Respondent's affidavit regarding the settlement agreement for occurrence number [REDACTED].

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, and the post-hearing submissions, 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 numbers [REDACTED] and [REDACTED] from registration records maintained by 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:

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]**

A group of interrelated customers – an initial customer, Mr. RL, and relatives and close friends to whom he recommended the Claimant – alleged in an civil litigation claim that Claimant had recommended an unsuitable security, the Hartford Variable Annuity, and misrepresented how it worked and its risks. Respondent investigated these allegations and found them meritless. Nevertheless, Respondent settled the claim on terms unknown to the Claimant without asking the Claimant to contribute to any monetary settlement. I find that both of these allegations are clearly erroneous.

With respect to the misrepresentation allegation, Claimant testified that he provided each member of the group with his own “bullet point” description of how the annuity worked and its risks in addition to the disclosure documents required by Hartford and WAMU. Claimant further testified that each member of the group acknowledged receiving these documents and understanding the annuity. In light of the documentation requirements for variable annuities imposed by annuity companies and regulators, I found the Claimant’s testimony completely credible. It necessarily follows that the customers’ misrepresentation allegation is clearly erroneous.

With respect to the unsuitability allegation, Claimant testified that he recommended to Mr. RL that he invest in tax-free municipal bonds to meet his tax-free income objective and a balanced, diversified portfolio of mutual funds to meet his tax-deferred growth objective. Claimant further testified that Mr. RL declined to invest in mutual funds, so Claimant recommended the Hartford Variable Annuity as an alternative. Given Mr. RL’s objectives, investment experience, and net worth, this was a suitable alternative. Mr. RL’s claim to the contrary is clearly erroneous.

Mr. RL recommended Claimant to some relatives and close friends. In response to my questioning, Claimant testified that he suggested a balanced, diversified portfolio of mutual funds to each member of this group, but they all insisted on mirroring the investments of Mr. RL. I found the Claimant’s testimony completely

credible. It necessarily follows that the allegation by Mr. RL's relatives and close friends that the Hartford Variable Annuity was unsuitable for them was clearly erroneous.

**Occurrence Number** [REDACTED]

Mr. and Mrs. R engaged the Claimant as their broker for sole the purpose of purchasing a particular corporate bond even though Claimant did not usually sell corporate bonds. Claimant testified that he researched the bond and then relayed his findings to Mr. and Mrs. R. The Claimant then purchased the bond on Mr. and Mrs. R's behalf. Subsequently, Mr. and Mrs. R complained to Respondent alleging that Claimant had recommended an unsuitable investment. Respondent investigated, found that the complaint was wholly unjustified, and so informed Mr. and Mrs. R. Mr. and Mrs. R took no further action. Claimant did not recommend an investment to Mr. and Mrs. R, much less recommend an unsuitable one. Mr. and Mrs. R's allegation to the contrary is clearly erroneous. Annuities recommended by Claimant provided not only potential gains from increases in the value of the investment portfolio within each annuity, but also a guaranteed lifetime income even if the value of the portfolios declined. This met Mr. and Mrs. R's documented goals to a "T." The claim made by Mr. and Mrs. R was clearly erroneous and false.

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: June 26, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00  
Hearing Date: October 18, 2108 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**

Mark R. Lee

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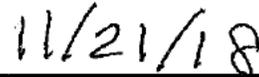
Sole Public Arbitrator

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**



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



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Signature Date

November 23, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)