

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

AXA Advisors, LLC

Investors Capital Corp.

The Equitable Life Assurance Society of the United States

Hearing Site: Albuquerque, New Mexico

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ Dochtor Kennedy, J.D., MBA, AdvisorLaw LLC, Westminster, Colorado.

For Respondent AXA Advisors, LLC ("AXA"): Hector D. Geribon, Esq., AXA, New York, New York.

For Respondent Investors Capital Corp ("ICC"): Christina Vourakis, Esq., Cetera Financial Group, El Segundo, California.

The Equitable Life Assurance Society of the United States ("ELA") did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on: March 29, 2018.

Amended Statement of Claim filed on: June 6, 2018.

Claimant signed the Submission Agreement: March 29, 2018 and June 6, 2018.

Statement of Answer filed by ICC on or about: May 22, 2018.

ICC signed the Submission Agreement: May 14, 2018.

AXA and ELA did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of five customer disputes (“Underlying Claims”) from his Central Registration Depository (“CRD”) records: four customer complaints, occurrence numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED]; and one FINRA Arbitration case, occurrence number [REDACTED].

In the Statement of Answer, ICC advised that while it does not oppose Claimant’s request for expungement, it requests that the Arbitrator deny Claimant’s request for compensatory damages.

In the Amended Statement of Claim, Claimant removed AXA and ELA as respondents and all references to occurrence numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

Hereinafter, occurrence number [REDACTED] is referred to as the “Underlying Arbitration.”

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of occurrence numbers [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of \$1.00 from respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, ICC requested:

1. A statement from the Arbitrator on the issue of whether to order recommending that the Underlying Claims be expunged from Claimant’s CRD records in the form required by FINRA Rule 2080;
2. Denial of Claimant’s request for \$1.00 in compensatory damages; and
3. All forum costs and fees be assessed against Claimant.

In the Amended Statement of Claim, Claimant requested:

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

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

OTHER ISSUES CONSIDERED AND DECIDED

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

By letter dated June 15, 2018, Claimant confirmed that his claims against AXA and ELA were withdrawn without prejudice and only Claimant's claim against ICC remained.

On July 3, 2018, Claimant and ICC ("Respondent") filed a Joint Stipulation and Proposed Order ("Stipulation") in which they stipulated to the following:

1. Claimant will not assert any new claims against Respondent in FINRA Case No. [REDACTED] (the "Action"), or seek an award greater than \$1.00 against Respondent;
2. Respondent did not engage in any wrongdoing with respect to the circumstances alleged in the Action and has been named solely as a nominal party for the purposes of Claimant's expungement request;
3. All fees and costs incurred in connection with the Action shall be assessed solely against Claimant;
4. Respondent will produce the customer complaint(s), response(s) and any settlement agreement related to the subject occurrence(s);
5. Respondent shall not be required to provide any additional discovery in the Action beyond that identified in paragraph 4;
6. Respondent shall not be required to appear or produce any witnesses in the Action; and
7. Respondent shall not oppose Claimant's request for expungement of the matters identified in the Action.

On July 13, 2018, the Arbitrator approved and executed the Stipulation.

On July 25, 2018, Claimant provided a copy of his notice to the customer in the Underlying Arbitration ("Customer") regarding the Amended Statement of Claim and notice of the expungement hearing. On July 27, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the Amended Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on November 14, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

ICC did not appear at the expungement hearing, as indicated in the Stipulation. The Customer also did not appear at the expungement hearing. The Arbitrator found that the Customer had notice of the expungement hearing and chose not to appear.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator reviewed the settlement documents from the Underlying Arbitration and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that Claimant did not contribute to the settlement, and that the settlement agreement was not conditioned upon the Customer's agreement not to oppose expungement.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's Amended Statement of Claim with exhibits 1-4; Claimant's oral testimony; and Claimant's Brief dated October 25, 2018 on the Underlying Arbitration.

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 Arbitration, occurrence number [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 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:

The Underlying Arbitration, as it reads on Claimant's CRD and BrokerCheck® Report, was an allegation regarding the suitability of four investments made between 2011 and 2013 for the Customer. The Customer sought damages in the amount of \$85,000.00. Claimant was not named as a respondent in the Underlying Arbitration. ICC made a business decision to settle the Underlying Arbitration for \$37,500.00, to which Claimant did not contribute. Further ICC does not oppose the granting of Claimant's request for expungement.

The Customer's allegation that Claimant's recommendations were unsuitable is factually impossible and false for all of the four recommended investments at issue because the Customer completed the investor profile questionnaires that gave Claimant a reasonable basis to

believe his recommendations were suitable for the objective and risk tolerance of the Customer.

The first investment at issue was a Jackson National Variable Annuity ("Annuity"). In purchasing this Annuity, the Customer signed documents acknowledging the fees and features of the Annuity. The Customer specifically acknowledged the suitability of the Annuity by signing the appropriate forms. The Annuity performed well and grew in value. The Customer was so satisfied with her original investment that she added additional funds to the Annuity after her original investment of \$100,000.00. The Customer acknowledged that the Annuity was a suitable investment by adding additional funds following her initial investment.

The second investment at issue was an Eastern Kodak Bond ("Bond") that the Customer purchased for \$9,750.00 as part of a portfolio that was comprised of bonds from over 25 different bond issuers. The Customer received a total of \$34,266.57 in bond distribution from 2011 to 2014. It is factually impossible and false that the Bond was unsuitable for the Customer because the Bond was in line with her investment objectives and risk tolerance. ICC, in investigating her claim, characterized it as frivolous but settled the claim in order to avoid further arbitration and legal fees.

The third investment at issue was the American Realty Capital Hospitality Real Estate Investment Trust ("ARCH"). In 2014, the Customer invested \$100,000.00 in ARCH. In order to invest in ARCH, the Customer was required to fill out and sign disclosures indicating that the Customer was willing to accept significant risk, that she had limited liquidity needs, that the risk tolerance on her investor profile was accurate and that she could bear the loss of her entire investment. The Customer received \$10,227.18 in distributions from ARCH. It is factually impossible and false that ARCH was unsuitable because the Customer specifically acknowledged the investment was suitable by signing the required disclosures to invest in ARCH.

The fourth investment at issue was the United Development Fiduciary IV ("UDF IV"). The Customer invested \$75,000.00. She signed a subscription agreement indicating that she received a prospectus for the investment and that she understood the risks and lack of liquidity of the investment. It is factually impossible and false that UDF IV was unsuitable because the Customer specifically acknowledged that she met the suitability requirements by signing the subscription agreement. The investment was in line with her risk tolerance, investment objective and lack of liquidity needs.

Finally, the Underlying Arbitration was brought against ICC and not Claimant. Claimant orally testified at the expungement hearing that Customer remains a satisfied client of Claimant to this day.

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, AXA is assessed the following:

Member Surcharge	= \$ 150.00
------------------	-------------

Accordingly, as a party, ELA is assessed the following:

Member Surcharge	= \$ 150.00
------------------	-------------

Accordingly, as a party, ICC 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 9, 2018	1 session

One (1) Hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 14, 2018	1 session

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


Laurel Littman Gothelf

-

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



Laurel Littman Gothelf
Sole Public Arbitrator

11-28-18
Signature Date

November 29, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)