

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

---

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

New England Securities

Hearing Site: Boston, Massachusetts

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochter Kennedy, Esq., and Harris Freedman, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent New England Securities: Eunice C. Jordan, Esq., MetLife, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 16, 2018.  
Amended Statement of Claim filed on or about: May 17, 2018.  
Claimant signed the Submission Agreement: January 16, 2018.

Respondent did not file an Answer.  
Respondent signed the Submission Agreement: June 13, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of occurrence number ██████████, compensatory damages in the amount of \$1.00, and any and all relief that the Arbitrator deems just and equitable.

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

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

By Order dated May 11, 2018, the Chairperson Ordered Claimant to file an Amended Statement of Claim in order to correct the original Exhibit 1 to the Statement of Claim. On May 18, 2018, Claimant filed a Motion to Amend. By Order dated June 1, 2018, the Arbitrator granted the Amendment.

Respondent did not appear at the hearing. Upon review of the file and the representations made on behalf of the Claimant, the Arbitrator determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

The Arbitrator conducted a recorded telephonic hearing on October 11, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

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

Respondent and the customer did not participate in the expungement hearing and did not contest the request for expungement.

Claimant provided proof that the customer was deceased.

On or about October 23, 2018, Claimant provided an Affidavit with proof of Respondent's waiver of non-participation and Affidavit that Respondent could not locate the Settlement Agreement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] considered the amount of payments made to the customer by the firm. The Arbitrator relied on Claimant's sworn testimony that the settlement was not conditioned on the customer not opposing the request for expungement and also noted that [REDACTED] did not contribute to the settlement amount.

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: Claimant's testimony and exhibits.

## 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 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 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:

In his petition to expunge his CRD record, Claimant attempted to explain his relationship with the customer despite the lack of records or other documentation from the Respondent. Presumably the Respondent settled the customer's complaint without a demand for arbitration as a business decision to avoid the costs and uncertainties of litigation. Claimant presented persuasive testimony to support a finding that the subject disclosure is based on a claim that was clearly erroneous and/or the information contained therein is false.

While Claimant has prior CRD disclosures the undersigned did not uncover any meaningful investor protection or regulatory value that could be achieved from retaining this particular disclosure on his CRD. Consequently, the undersigned recommends that this disclosure should be expunged.

2. Any and all claims for relief not specifically addressed herein are denied.

## ARBITRATOR'S REPORT

### Summary of Claim

The associated person, [REDACTED] ("Claimant"), requests expungement of a U-4 disclosure concerning a November 11, 2002 customer complaint alleging that Claimant: (i) "...intentionally gave bad advice to receive commissions, (ii) 'disregarded her instructions to buy some mutual funds and sell others in a timely manner in 1998 and 1999', (iii) 'failed to execute sell instructions on certain tech stocks', and (iv) 'would not surrender a life insurance policy as requested.'" According to the U4, the customer sought damages in the amount of \$31,365.00 without making a demand for arbitration. The Claimant denied the allegations, and the Respondent settled the matter without a contribution from Claimant in the requested amount.

### Factual Background

Claimant has been a licensed registered representative since March 23, 1995 pursuant to the Series 6, 7, 24, 63, 66, and SIE examinations; and had worked for Respondent for six years before resigning in 2001 to join SII Investments, Inc. Claimant is currently employed by Kestra Investment Services, LLC in Fairfield, NJ as a Financial Advisor and serves 400-500 clients.

According to Claimant, he met the customer in 1998 at a seminar on the use of life insurance in estate planning, and she became a client sometime thereafter. Subsequently, he met with her and her estate planning attorney several times in connection with the purchase of life insurance as an element of a trust naming her daughter-in-law as a beneficiary. The customer, who was in her mid-to late 60's at the time, also established a brokerage account that she actively managed. The Claimant left the Respondent's employ in 2001, but was later contacted by the customer for advice. She informed him that she had suffered some personal setbacks. The customer stated she no longer wanted the life insurance policy and desired a return of the premium to cover some investment losses she had incurred from the 2001 market downturn. Claimant credibly testified that he informed her that he no longer employed by Respondent and therefore had no ability to assist her. It is unclear what the surrender terms were for the policy, however, Claimant said he suggested some language the customer might use in a letter to possibly get the funds returned. Claimant stated he considered the customer a friend and had no idea she would use this information against him until he received a telephone call from Respondent indicating that the customer had made a complaint. Claimant stated he promptly consulted with a Compliance Officer of his then current employer (SII, Investments) who advised him to ignore the Respondent's call. In his naiveté, the Claimant followed the Compliance Officer's advice without realizing that the complaint would adversely affect his career. However, when the customer called him again in 2003 or 2004 to ask about long term care insurance, he declined to assist her.

Respondent's FINRA membership terminated on April 3, 2015 whereupon its parent company Metropolitan Life Insurance Company ("MetLife") became its successor in interest for the purpose of this Amended Statement of Claim for expungement, which was filed May 16, 2018. In a letter to FINRA, dated June 12, 2018, Metlife stated that it had reached agreement with Claimant's counsel to file an Answer to the Claim by June 22, 2018.

Claimant's counsel requested all relevant information including the customer's complaint and the Settlement Agreement from Metlife. However, on or about August 21, 2018, Metlife informed Claimant's counsel that they were unable to locate any responsive documentation from its document storage vendor (Iron Mountain). Metlife never filed an Answer to the Claim, and ceased its participation in this matter without further notice to Claimant or FINRA.

In the interest of time, a hearing was conducted on October 11, 2018, but the undersigned left the record open- pursuant to an October 12, 2018 Interim Order, which directed Claimant's counsel to contact Metlife's counsel to ensure that it would have every opportunity to participate in the proceedings if they so desired, and to confirm in writing that it no longer wished to participate. Claimant's counsel obtained an emailed confirmation that Metlife changed its mind sometime earlier and had not planned to participate in the October 11th hearing. Therefore, the undersigned Arbitrator proceeds with an award based on the information available.

Requests for expungements of customer disputes contained in an associated person's CRD is governed by FINRA Rule 2080, which provides that FINRA has the authority to do so if there is a determination that the expungement relief is based on affirmative judicial or arbitral findings that: (A) the claim, allegation or information is factually impossible or clearly erroneous; (B) the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or (C) the claim, allegation or information is false. In light of the fact that we lack the Respondent's records to contradict Claimant's credible testimony; and the fact that the customer is deceased and unable to corroborate or refute the CRD disclosure ... the undersigned relies on the testimony, papers, and documented market influences around the time of the customer's alleged complaint.

Ordinarily, a customer's Statement of Claim would provide some explanation of what acts, omissions or violations of securities laws the Financial Advisor is alleged to have committed. There was no Statement of Claim, no complaint letter, or a Settlement Agreement between the customer and Respondent. But more remarkably, there is no written evidence showing how Claimant was made aware of the alleged acts or omissions he allegedly committed, and nothing documenting that he had a fair opportunity to defend himself against the claim(s). All we know, from the CRD disclosure, is Claimant did not contribute to the alleged settlement amount.

However, the undersigned is baffled by Respondent's alleged inability to retrieve basic information regarding the complaint and settlement, especially given the effect they knew, or should have known, it would have on an associated person's CRD. Indeed, the primary purpose of retaining a data and records storage company is to easily retrieve important records. Metlife's cavalier response vis-à-vis its failure to locate and produce even the most basic information related to the customer's alleged complaint is troubling. Therefore, following the general rule of law, and lacking evidence to the contrary, the undersigned finds that an adverse inference can be drawn against Respondent for failing to produce documents supporting the customer allegations they reported.

Nevertheless, Claimant's pleadings are supported by his credible testimony. Given that Claimant met the customer at a seminar on the value of making life insurance an element in estate planning; he met several times with her estate planning attorney; the customer applied, and was approved for a life insurance policy. In addition, there is no evidence whatsoever that he made an unsuitable recommendation. Accordingly, the undersigned can reasonably conclude that the customer's allegation that Claimant made an unsuitable investment recommendation was false. Moreover, the fact that Claimant was no longer employed by Respondent at the time the customer alleged that he refused to surrender her life insurance policy renders the claim erroneous on its face. There is no basis for a finding that Claimant violated the Rules by failing to perform a customer request he could not possibly undertake. In other words, the element of the customer's complaint that Claimant failed to surrender the life insurance policy is factually impossible.

### **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
--------------------------	------------

*\*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, New England Securities 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, 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: May 11, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: October 11, 2018	1 session

---

Total Hearing Session Fees	= \$100.00
----------------------------	------------

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**

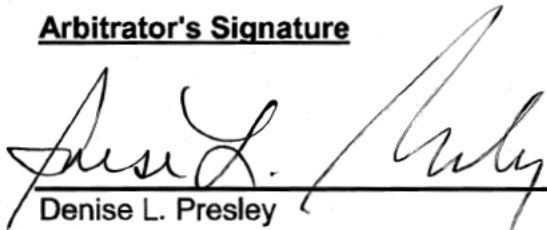
Denise L. Presley

-

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**

  
\_\_\_\_\_  
Denise L. Presley  
Sole Public Arbitrator

12/03/2018  
Signature Date

December 3, 2018

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