

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

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In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number:

[REDACTED]

vs.

Respondent

Ameriprise Financial Services, Inc.

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Broomfield, Colorado, and Michael J. Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent Ameriprise Financial Services, Inc.: Edward A. Walton, Esq., Ameriprise Financial Services, Inc., Troy, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: February 28, 2018.  
Claimant signed the Submission Agreement: February 28, 2018.

Statement of Answer filed by Respondent on or about: April 23, 2018.  
Respondent signed the Submission Agreement: April 23, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

In the Statement of Answer, Respondent did not oppose Claimant's expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of customer complaints from his CRD records, compensatory damages of \$1.00, and any and all other relief deemed just and equitable.

During the hearing, Claimant withdrew the request for compensatory damages.

In the Statement of Answer, Respondent requested expungement of the customer complaints from Claimant's CRD records, denial of the request for compensatory damages, and that all costs and fees be assessed against Claimant.

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

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

The Arbitrator conducted a recorded in-person hearing on November 1, 2018 so that the parties could present oral argument and evidence on Claimant's request for expungement.

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

On June 20, 2018, August 24, 2018 and October 10, 2018, Claimant notified the customers in the underlying complaints of his request for expungement and of their right to participate in the expungement hearing and also provided the customers with a copy of the Statement of Claim.

The customers in the underlying complaints for Occurrence Numbers [REDACTED] and [REDACTED] did not participate in the expungement hearing and did not oppose Claimant's expungement request.

The customers in the underlying complaint for Occurrence Number [REDACTED] did not participate in the expungement hearing but opposed Claimant's expungement request.

The Arbitrator finds that the customers do not desire to participate in the expungement hearing and that a decision on the merits of Claimant's request can be entered.

The Arbitrator did not review the settlement documents for Occurrence Number [REDACTED] since they could not be located due to the age of the complaint. Based on Claimant's uncontested testimony, the Arbitrator finds that the settlement was not conditioned on the customers not opposing the request for expungement, that Respondent settled to avoid litigation costs, and that Claimant did not participate in the settlement nor contribute to the settlement amount.

The Arbitrator reviewed Claimant's BrokerCheck® Report and Claimant testified that he did not previously file claims requesting expungement of the same disclosures in the CRD. The Arbitrator found no contradiction of that testimony in his review of Claimant's BrokerCheck Report.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's testimony, Claimant's BrokerCheck Report and CRD Snapshot, and various other exhibits.

## 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 Numbers [REDACTED] and [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:

(a) The investments were non-discretionary – customer consent to buy or sell was required of the customers and was given; (b) the customers were not neophytes in managing their investments; (c) Claimant testified that before investing for the customers, he developed a detailed investment profile and investment plan which he reviewed with them; (d) Claimant testified that the investments were in a recognized program in the industry (Neuro program by Standard & Poor's) dealing blue chip stocks; (e) Claimant testified that the customers were fully informed of Class B surrender charges prior to their purchase of same; (f) when the Neuro program proved unproductive for the customers, Claimant took steps to limit the loss; (g) the loss occurrences took place in a down market; (h) the customers' complaint relating to the cancelled life insurance policy appears frivolous. Claimant stated in uncontradicted testimony that: the original life insurance policy was purchased prior to Claimant's involvement with the customers; the replacement policy was not solicited by Claimant and was purchased by the customers against Claimant's advice; Claimant subsequently cancelled the policy on direct instructions from the customer. After his wife strongly disagreed with cancellation, he subsequently instructed Claimant to reinstate the life insurance policy but despite Claimant's efforts the insurance company refused to reinstate; and, Respondent investigated the customers' 2005 insurance policy claim at the time it was made and rejected that claim; (i) while the customers complained to the Respondent, they never made an arbitration claim against Claimant; and, (j) Claimant did not contribute to Respondent's settlement of the customers' 2004 claim and Claimant maintains that Respondent settled that matter without authority or consultation with the Claimant.

Claimant testified he was told that Respondent settled only to avoid litigation costs. Respondent's counsel stated at the arbitration that Respondent was unable to locate the settlement papers for the customers' 2004 claim (settlement was in 2005) but did not contradict Claimant's testimony.

2. 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.

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

(a) The investments were non-discretionary – customer consent to buy or sell was required of the customers and was given; (b) the customers were not neophytes in managing their investments; (c) Claimant testified that before investing for the customers, he developed a detailed investment profile and investment plan which he reviewed with them; (d) the disputed investment was in a recognized program in the industry (Neuro program by Standard & Poor's) dealing blue chip stocks; (e) when that program proved unproductive for the customers, Claimant took steps to limit the loss; (f) the loss occurrence took place in a down market; (g) Respondent investigated the customers' claims at the time they were made in the summer of 2005 and rejected those claims. At this point, Claimant was no longer affiliated with Respondent; and, (h) while the customers complained to the Respondent, they never made an arbitration claim against Claimant.

3. 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:

The customers participated in this expungement arbitration after having been given notice by submitting a page and a half email supporting their April 29, 2010 claims which was marked as Arbitrator's Exhibit 2. That email was detailed, articulate, passionate, and disputed in very strong terms Claimant's assertion that he diligently shepherded their investments, gave appropriate investment advice, and appropriately performed his duties in relation to their investments. Claimant at the arbitration hearing sharply disputed the assertions in the customers' email, stated that he frequently met with the customer, thoroughly discussed all investment decisions with him and that the ultimate decision on investments was made by the customers since this was a non-discretionary account. He also testified that the customers' portfolio that he managed did better than the market and the customers reasonably decided to ride out the market, a strategy he thought was appropriate in circumstances.

If the competing facts espoused by the Claimant and the customers was the end of the story, then there could be no expungement under the standards set by FINRA Rules 2080(b)(1)(A) and (C) since the standards of "clearly erroneous" and "falsity" could not be attained given the contradictory versions of the pertinent facts. The parties' statements, however, are not in my view conclusive although most likely sincere. It is the actions of the customers that suggests their conclusions are erroneous. The time period when the customers maintain the Claimant engaged in wrongful activities involving their accounts was 2003-2004. Yet their customer complaint against Claimant was not made to the Respondent until April 29, 2010 approximately six years after the customers switched their accounts to a different broker and six years after Claimant switched his affiliation from Respondent to a different broker dealer, which he testified was for unrelated business reasons.

Respondent investigated the customers' claims at the time they were made in April 2010 and rejected those claims. At this point, Claimant was not affiliated with Respondent. Following Ameriprise's rejection of their claims involving Claimant, the customers never made a FINRA arbitration claim or a claim in any other venue although their alleged damages were quite large.

4. 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 event giving rise to the dispute. Accordingly, as a party, Respondent Ameriprise Financial Services, Inc. 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:

Two (2) pre-hearing sessions @ \$50.00/session	=\$100.00
Pre-hearing conferences: June 19, 2018	1 session
August 21, 2018	1 session

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

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Total Hearing Session Fees	=\$150.00
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The Arbitrator has assessed the hearing session fees of \$150.00 to Claimant.

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

**ARBITRATOR**

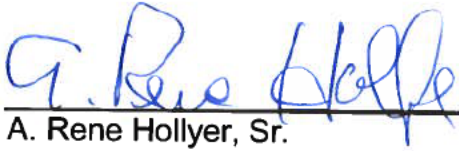
A. Rene Hollyer, Sr.

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**



A. Rene Hollyer, Sr.  
Sole Public Arbitrator



Signature Date

**December 4, 2018**

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