

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number:

vs.

Respondent

Hearing Site: Raleigh, North Carolina

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Eric Litow, Esq. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: January 17, 2018.

[REDACTED] signed the Submission Agreement: January 17, 2018.

Statement of Answer filed by Respondent on or about: March 9, 2018.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: March 9, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00; expungement of occurrence numbers [REDACTED] and [REDACTED] and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested the Arbitrator deny Claimant's request for compensatory damages and to assess forum fees to Claimant. Respondent took no position regarding Claimant's request for expungement of occurrence numbers [REDACTED] or [REDACTED].

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 telephonic hearing on November 27, 2018 so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customer in the underlying complaints in occurrence numbers [REDACTED] and [REDACTED] with notice of his expungement request and notice of the customers' right to participate and testify at the expungement hearing. The customers did not participate in the expungement hearing and did not contest the request for expungement.

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

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents related to occurrence number [REDACTED]. [REDACTED] considered the settlement terms related to occurrence number [REDACTED]. [REDACTED] considered the payment made to the underlying customer, and considered other relevant terms and conditions of the settlement in occurrence number [REDACTED]. The Arbitrator noted that the settlement in occurrence number [REDACTED] was not conditioned on the underlying customer not opposing the request for expungement. The Settlement Agreement related to occurrence number [REDACTED] was not available due to the age of the settlement. The Arbitrator was unable to confirm whether or not the settlement was conditioned on the customer not opposing the request for expungement. Although the Settlement Agreement related to occurrence number [REDACTED] was not available, the Arbitrator granted expungement based on the circumstances of the matter described in the award section below. The Arbitrator noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that Claimant [REDACTED] did not previously file a claim requesting expungement of occurrence numbers [REDACTED] and [REDACTED].

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings, the testimony presented at the hearing, a review of the Claimant's BrokerCheck Report, the settlement including the amounts paid by any party and other relevant terms and conditions of the Settlement Agreement.

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] 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 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:

Claimant's testimony stated the customer established an investment committee staffed by senior management personnel, who had extensive experience in investment decisions. The Claimant also testified that he had a partner who was responsible for interacting with the investment committee, and that Claimant's responsibility was to initiate the approved investment transaction. Further testimony indicated that Claimant's contact partner met with the customer often to discuss investment opportunities and to evaluate the existing investment portfolio. During several meetings with the customer, they were advised that one specific investment the settlement was based on was having financial difficulties, but the customer was comfortable enough with the investment not to liquidate the position. The settlement amount was less than 1% of the total portfolio. The customer maintained their relationship with the Claimant and his partner for several years after the complaint was settled. It was also noted from Claimant's testimony that occurrence number [REDACTED] was expunged from his partner's CRD record.

- The Arbitrator recommends the expungement of all references to occurrence numbers [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 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:

Claimant testified that after he and his partner established a relationship with the customer and prepared a customer profile and risk tolerance, the customer often changed his preference for an investment strategy between high risk and low risk investments. The customer was convicted of medicare fraud, but still conducted investing activities while in prison. The Claimant testified that he and his partner currently have the customer's ex wife and family members as customers. Respondent stated on Claimant's Form U4 that the settlement was agreed solely to avoid the expense of litigation. It was also noted from Claimant's testimony that occurrence number [REDACTED] was expunged from his partner's CRD record.

- 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 events giving rise to the dispute. Accordingly, as a party, Merrill Lynch, Pierce, Fenner & Smith, Inc. 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 30, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: November 27, 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.

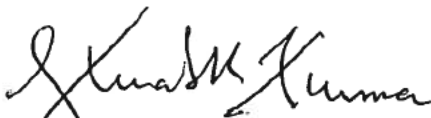
ARBITRATOR

Stuart K. Furman

- 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



Stuart K. Furman
Sole Public Arbitrator

12-10-18

Signature Date

December 10, 2018

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