

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

National Securities Corporation

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Michael Bessette, Esq. and Christopher Cummins, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent National Securities Corporation: Emily A. Hayes, Esq., National Holding Corporation, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: February 19, 2018.

[REDACTED] signed the Submission Agreement: February 19, 2018.

Statement of Answer filed by Respondent on or about: April 11, 2018.

National Securities Corporation signed the Submission Agreement: April 11, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Respondent did not object to Claimant's request for expungement.

RELIEF REQUESTED

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

In the Statement of Answer, Respondent took no position with regard to Claimant's request for expungement of occurrence numbers [REDACTED] and [REDACTED]. Respondent requested that the Arbitrator assess all forum fees and costs, including any member surcharges, 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 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 complaint 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 customer in the underlying complaint, 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 customer in the underlying case not opposing the request for expungement. Claimant paid the settlement amount in the underlying case which was a nominal amount as a refund of the commissions. Although the Claimant paid the settlement amount in occurrence number [REDACTED] the Arbitrator granted expungement based on the circumstances described in the award section below.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's submissions, Claimant's BrokerCheck® Report, and Claimant's testimony.

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 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 finding of fact:

The claim, allegation, or information is false.

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

The complaint made in an attorney's letter on behalf of the customer alleged damages of \$45,000.00 for wrongdoing based on many grounds. However, the credible evidence presented at the hearing showed that the complaint was devoid of any specificity and the customer offered no support for the claimed wrongdoing with respect to the approximately 15 trades in the account, all of which trades were in conformity with the customer's objectives and authorized by him. The evidence further showed that Respondent decided to settle the complaint for the nominal amount of \$3,500.00 representing the return of the commissions paid by the customer. In accordance with the agreement between Claimant as an independent broker-dealer and Respondent, Claimant was obligated to pay and did pay the entire settlement amount.

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.

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:

The customer purchased a private placement offering of a company that subsequently went public. After the position was sold, the customer complained that he did not authorize the sale. Claimant submitted exhibits, which clearly support that the trading strategy was discussed with and approved by the customer. In particular, Exhibit 3 contains the customer's March 23, 2016 email retracting his complaint. Based on the foregoing, I find the customer's claim is clearly erroneous.

3. 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, Respondent National Securities Corporation is assessed the following:

Member Surcharge	= \$ 150.00
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Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

October 29, 2018, postponement by Claimant	= \$ 50.00
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Total Postponements Fees	= \$ 50.00
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The Arbitrator has assessed the \$50.00 postponement fees to Claimant.

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: June 27, 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
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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

Joseph J. Arata

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



Joseph J. Arata
Sole Public Arbitrator

12-7-2018
Signature Date

December 10, 2018

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