

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Ameritas Investment Corp.

Hearing Site: Omaha, Nebraska

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Doctor Kennedy, Esq. and Harris Freedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Ameritas Investment Corp. (“Respondent”): David M. Williams, Esq. and Andrea Snowden, Esq., Ameritas Investment Corp., Lincoln, Nebraska.

**CASE INFORMATION**

Statement of Claim filed on or about: February 5, 2018.  
Claimant signed the Submission Agreement: February 5, 2018.

Statement of Answer filed by Respondent on or about: March 29, 2018.  
Respondent signed the Submission Agreement: February 13, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers ██████████ and ██████████, from his registration records maintained by the Central Registration Depository (“CRD”).

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers ██████████ and ██████████ from his CRD, \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that all further relief, including

Claimant's request for an award of damages, be denied and that all forum fees and costs of this proceeding be assessed against Claimant.

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

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

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

In accordance with the Initial Pre-Hearing Conference Order, on or about June 27, 2018, Claimant filed a copy of the letter sent to the customers for Occurrence Numbers [REDACTED] and [REDACTED] (the "Customers"), providing them with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on November 19, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing. The Customers did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and found that there were no settlements for Occurrence Numbers [REDACTED] and [REDACTED].

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the evidentiary testimony of Claimant.

### **AWARD**

After considering the pleadings, the testimony, and the 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 the registration records maintained by the 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 of Arbitration Procedure (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 two issues before us are unsuitability and the failure to sell when instructed to do so. Both occurrences arise out of the same single purchase of a FDIC-insured, Callable Certificate of Deposit (the "CD").

Claimant provided suitable financial advice, consistent with the Customers' investment goals, objectives, and strategy. The Customers were not novice, directionless investors. They each arrived with 15 years of investment experience and demanded an FDIC insured product. The Claimant, now 64 years old and a 34-year financial industry veteran, had previously serviced more than 10,000 clients. He is now self-employed and services over 1,000 clients. These Customers present Claimant's only industry complaints.

The undisputed evidence shows that the CD was suitable for the Customers. They sought a conservative, low-risk tolerance investment. The CD generated a monthly dividend payout of 5%, provided safety of principal, and was a long-term product with the flexibility to sell without penalty before maturity. The Customers met with Claimant several times to discuss the CD, exercised their independent judgment, and signed a Certification (which memorialized their understanding of the CD), before investing 40% of their portfolio into the CD. Based on these facts, the allegation of unsuitability is false.

Next, the failure to execute the Customers' order to sell the CD was suitable because it was factually impossible for the order to be sold at a price higher than its actual value. Here, the price sought by the Customers was erroneously recorded on the Customers' statement. When Claimant investigated the request, he discovered the sell order was for more than the product's original purchase value and the actual value of the CD at the time was significantly less.

Claimant's action of refusing to sell the CD at a loss within two months of purchase prevented the Customers from losing money and was in the best interests of the Customers. When Claimant learned this request to sell was impossible to fulfill, he told the Customers he would revisit selling the CD when the price recovered since the great benefit of the CD was that it could be redeemed at any time before maturity without any early redemption penalty. It was only because Claimant conscientiously followed up with the Customers after the original order confirmation that he discovered the incorrect value reflected on their statement. While identification of the valuation error might not have pleased the Customers, it certainly evidenced no wrongdoing. The Customers blamed Claimant for the incorrect statement but he did not issue it. As a result, the Customers lost confidence in Claimant, refused to work with him, and worked with Respondent's compliance manager to close their accounts after selling the CD below the purchase price.

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
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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 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(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: June 6, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: November 19, 2018	1 session

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Total Hearing Session Fees	= \$ 100.00
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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**

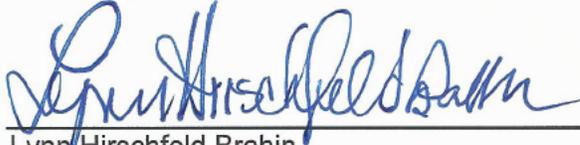
Lynn Hirschfeld Brahin

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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**



Lynn Hirschfeld Brahin  
Sole Public Arbitrator

12/14/18

Signature Date

December 17, 2018

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