

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondent

Hearing Site: Baltimore, Maryland

Merrill Lynch Pierce Fenner & Smith Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Armin Sarabi, Esq., AdvisorLaw LLC, Broomfield, Colorado.

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

CASE INFORMATION

Amended Statement of Claim filed on or about: February 5, 2018.

[REDACTED] signed the Submission Agreement: January 24, 2018.

Statement of Answer filed by Respondent on or about: April 6, 2018.

Merrill Lynch Pierce Fenner & Smith Inc. signed the Submission Agreement: April 5, 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 expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED] 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 requested the Arbitrator deny Claimant's request for compensatory damages and that forum fees be assessed against the Claimant. Respondent took no position regarding Claimant's request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

Claimant replaced the Statement of Claim with the Amended Statement of Claim on February 5, 2018. The Arbitrator was provided with the Amended Statement of Claim only and did not consider the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on December 10, 2018 so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED].

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaints in occurrence numbers [REDACTED], [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]

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of occurrence numbers [REDACTED], [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 Arbitrator considered the origin of the complaint, Claimant's response, and Respondent's response to the customer. The Claimant testified that the customer was notified of the 4% deferred sales charge if she liquidated her mutual fund and that he did not assure the customer that she would not lose more than 4% of her money. The losses in the customer's account were due to market losses. The customer did not pursue her claim in arbitration or object to Claimant's request for expungement.

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 false.

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

The Arbitrator considered the nature and timeliness of the complaint, the market conditions at the time of the complaint, Claimant's response, and the customer's response to the transfer of his account to another financial advisor. Claimant's testimony was cogent and compelling. Any losses in the customer's account were due to market conditions. The customer in the underlying matter did not pursue his claim in arbitration and did not object to Claimant's request for expungement.

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 finding of fact:

The claim, allegation, or information is false.

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

This claim evolved out of displeasure the customers in the underlying complaint had with the performance of an investment managed by the Claimant. The customers' investment objective was long term growth for their retirement. The market conditions caused the value of their accounts to decline. The customers eventually took a more direct role in selecting the funds they would invest in. The company refunded the sales charges on the initial investments. The Arbitrator considered the nature and timeliness of the complaint, the market conditions, the accounting errors made by the Respondent, and the Respondent's response to those errors.

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 events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith 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:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session	= \$	50.00
Pre-hearing conference: June 8, 2018	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: December 10, 2018	1 session	
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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

ARBITRATOR

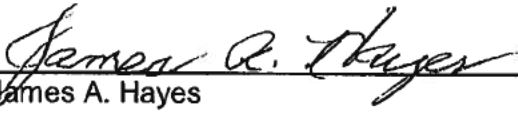
James A. Hayes

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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



James A. Hayes
Sole Public Arbitrator

12-16-18
Signature Date

December 18, 2018

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