

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

RP Capital LLC

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondent RP Capital LLC (“Respondent”): Gary Price, RP Capital, LLC, Gig Harbor, Washington.

**CASE INFORMATION**

Statement of Claim filed on or about: February 7, 2018.  
Claimant signed the Submission Agreement: February 7, 2018.

Respondent did not file a Statement of Answer and did not sign the Submission Agreement.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of two customer disputes (“Underlying Claims”) which were initially filed as two FINRA Arbitration cases but then enjoined into one class-action civil litigation, occurrence numbers ██████████ and ██████████, from his Central Registration Depository (“CRD”) record.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Claims from his CRD record pursuant to FINRA

Rule 2080(b)(1)(B) as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;

3. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
4. Damages in the amount of \$1.00 against Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

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

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

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having appeared at the expungement hearing, is bound by the determination of the Arbitrator on all issues submitted.

On September 12, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on the customer in occurrence number [REDACTED] (“Mr. N”); and the son of the customer in occurrence number [REDACTED] (“Mr. S”). The Arbitrator found that Mr. S had power of attorney over his mother’s accounts.

Hereinafter, Mr. N and Mr. S are collectively referred to as the “Customers.”

On October 5, 2018, Claimant submitted an Affidavit of Service signed by Claimant’s counsel advising that the Customers had been served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 10, 2018 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and did not contest Claimant’s request for expungement. The Arbitrator found that the Customers had notice of the expungement hearing but did not participate in the hearing.

At the conclusion of the expungement hearing, the Arbitrator held the record open until November 10, 2018 to allow Claimant time to produce a current BrokerCheck® Report for Claimant, copies of written settlement agreements in the Underlying Claims, and corroborating evidence in support of Claimant’s sworn testimony that he was not the broker of record for Mr. S’ mother.

On October 25, 2018, Claimant submitted Claimant’s BrokerCheck® Report and an email dated October 15, 2018 from Mr. S to Claimant, in which Mr. S stated as follows:

As per our recent conversations, I am writing this email to confirm that I do not hold you accountable for the losses my mother experienced on the investments in Aequitas. You did never [sic] solicited these investments to her. In fact, you never met or discussed these investments with her. The original complaint was filed against [Respondent] and was never intended to involve you in anyway.

In the same October 25 submission, Claimant also advised that he was not a party to either settlement agreement and did not contribute to the settlement payments. Further, Claimant advised that it was unclear whether the settlement for occurrence number [REDACTED] was part of a class action settlement or with Respondent directly.

On November 2, 2018, the Arbitrator again ordered that the parties had until November 10, 2018 to produce the remainder of the documents discussed at the expungement hearing, including the settlement agreements in the Underlying Claims or an explanation as to why the settlement agreements cannot be produced.

On November 9, 2018, Claimant submitted a letter advising that he has been unable to obtain the settlement agreements in the Underlying Claims, because Claimant was not a party to either settlement and therefore did not have copies of the settlement agreements, and Respondent had not produced the settlement agreements. On November 13, 2018, Claimant submitted the General Release and Settlement Agreement between the customer in occurrence number [REDACTED] (Mr. S' mother), Respondent and two other brokers.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator reviewed the settlement agreement for the FINRA Arbitration Case referenced in occurrence number [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer (Mr. S' mother) not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator was unable to review the settlement agreement in occurrence number [REDACTED] because Claimant was not involved in the settlement and he was unable to obtain a copy of the settlement agreement. As the Arbitrator could not review the settlement documents and as Claimant was not involved in the settlement, the Arbitrator could not consider the amount of payments made to any party, nor the other relevant terms and conditions of the settlement. The Arbitrator could also not determine whether the settlement was conditioned on Mr. N not opposing Claimant's request for expungement. Based on Claimant's testimony, the Arbitrator noted that Claimant did not contribute to the settlement amount.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Claimant's sworn testimony, which the Arbitrator found to be extensive and very credible;
- Pleadings;
- Exhibit 3 – Letter dated July 14, 2010 from Mr. N to Strategic Capital Group;
- Exhibit 5 – RP Capital New Account Form for Mr. N;
- Exhibit 22 – Letter dated October 4, 2011 from the Fund Operations Administrator at Aequitas Capital to Mr. N;
- Exhibit 27 – Mr. N's Aequitas ETC Founders Fund, LLC Subscription Booklet, which the Arbitrator found corroborates Claimant's testimony that Mr. N personally selected and signed up for his investments;
- Exhibit 28 - General Release and Settlement Agreement between the customer in occurrence number [REDACTED] (Mr. S' mother), Respondent and two other brokers; and
- Email dated October 15, 2018 from Mr. S to Claimant.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, 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 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.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

The genesis of these claims is the failure of securities offered by Aequitas Capital, known as an Aequitas Private Note. Aequitas went into receivership and was later the subject of an investigation and prosecution by the SEC.

It is clear that Claimant was not in any way associated with Aequitas, Claimant did not and could not have known about the scheme perpetrated by Aequitas. Thus, he could not possibly have misrepresented the security to the Customers.

When the Aequitas scheme came to light, Claimant assisted many of his customers with their claims in receivership. No evidence was ever submitted in support of the allegations made by the attorneys for these customers, and no claims were ever pursued against Claimant.

I understand that the Customers wanted to attempt to recover money from wherever they could and that the attorneys for the Customers felt compelled to make a claim against anyone in sight, however in this case it seems clear that no purpose is served by keeping these two occurrences on Claimant's CRD. Accordingly, I recommend expungement.

**Occurrence Number [REDACTED] (in which Mr. N is the customer)**

Mr. N personally selected and signed up for the investments at issue. Therefore, allegations that Claimant was involved in a sales practice violation are clearly false.

**Occurrence Number [REDACTED] (in which Mr. S' mother is the customer)**

Claimant did not advise Mr. S' mother. Mr. S' mother's attorney simply included Claimant in the claim.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent 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(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: August 2, 2018 1 session

One (1) hearing session @ \$50.00/session = \$50.00  
Hearing Date: October 10, 2018 1 session

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Total Hearing Session Fees = \$100.00

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**

Robert D. Sussin

- 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**



\_\_\_\_\_  
Robert D. Sussin  
Sole Public Arbitrator

12/22/2018

\_\_\_\_\_  
Signature Date

December 27, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)