

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Commonwealth Financial Network

Hearing Site: Salt Lake City, Utah

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, Esq. and Michael O’Gara, Esq., AdvisorLaw, LLC, Westminster, Colorado.

Respondent Commonwealth Financial Network (“Respondent”) did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: March 23, 2018.

Claimant signed the Submission Agreement: March 23, 2018.

Respondent did not file a Statement of Answer or a properly signed Submission Agreement.

**CASE SUMMARY**

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

**RELIEF REQUESTED**

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

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

### **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 is bound by the determination of the Arbitrator on all issues submitted.

On or about September 19, 2018, in compliance with the Initial Pre-hearing Conference Order, Claimant filed a copy of the letter sent to the customer (the “Customer”) for the Underlying Occurrence, providing him with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. On or about October 24, 2018, Claimant filed a copy of the follow-up letter sent to the Customer notifying him of the hearing location. On or about November 2, 2018, Claimant filed a copy of the second follow-up letter sent to the Customer notifying him of a change in the hearing time.

The Arbitrator conducted a recorded, in-person hearing on November 29, 2018, so the parties could present oral argument and evidence on Claimant’s request for expungement. Neither Respondent nor the Customer appeared at the expungement hearing. Upon review of the file and the representations made on behalf of the Claimant, the Arbitrator determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and found that there was no settlement for the Underlying Occurrence.

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 following documentary or other evidence: Claimant’s testimony and the exhibits provided by Claimant.

### **AWARD**

After considering the pleadings, the testimony and the 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 Number [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, 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:

In 2007, the Customer became a client of Claimant. He came to Claimant because he was dissatisfied with his prior broker. Claimant had 22 years of experience in the securities industry. Claimant described the Customer as “very bright” with extensive investment experience and a high net worth. They met every six months to review the Customer’s portfolio.

Based on the Customer’s investor profile and objectives, Claimant recommended two variable annuities. Six to eight conversations between the Customer and Claimant preceded the purchase of the annuities. Claimant testified that he explained the terms of the proposed annuities and that the Customer understood them. The Customer purchased the annuities in 2007.

When the 2008 recession occurred, an insurance agent advised the Customer to sell his annuities and buy life insurance. Thereafter, the Customer told Claimant that he wanted to surrender one of the annuities. Claimant explained that this could not be done under the terms of the annuity. On January 12, 2011, Claimant prepared an Annuity Contract Review for the Customer. It contained a detailed analysis of the values of both annuities and the financial consequences of withdrawals. Specific recommendations were given in the Annuity Contract Review. The Customer did not make a complaint against Claimant until January 21, 2012, when the Customer filed a letter of complaint. The complaint was based on the Customer’s subjective interpretations of the annuities and requested that the two issuers of the annuities reimburse him for his market losses and pay him interest. Thereafter, the Customer’s complaint was reported on CRD, alleging that Claimant had misrepresented the terms of the two annuities.

Claimant seeks expungement of this complaint. Claimant testified under oath that he explained the terms of the annuities numerous times to the Customer, there were no misrepresentations, and the Customer reviewed the prospectuses issued for the annuities before buying them. This is supported by the evidence. Based on the testimony and the evidence presented at the hearing, the Arbitrator concludes that the claims of the Customer were clearly erroneous and false and there were no misrepresentations by Claimant.

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: July 11, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: November 29, 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**

Merton E. Marks

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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**



Merton E. Marks  
Sole Public Arbitrator



Signature Date

December 31, 2018

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