

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ Eric Litow, Esq. and Dochter Kennedy, Esq.,  
AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Randi Spallina,  
Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 30, 2018.

██████████ signed the Submission Agreement: April 30, 2018.

Statement of Answer filed by Respondent on or about: July 12, 2018.

Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement:  
July 12, 2018.

**CASE SUMMARY**

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two customer complaints (Occurrence Nos. ██████████ and ██████████) and one customer arbitration filed with the New York Stock Exchange (Occurrence No. ██████████) recorded on Claimant's CRD records. The dispute in Occurrence ██████████ involved the customers' investment in a closed-end fund that was offered as an initial public offering. The dispute in Occurrence No. ██████████ involved the customer's investment in corporate bonds and stocks. The dispute in Occurrence No. ██████████ involved the customer's investment in stocks.

In its Statement of Answer, Respondent asserted various affirmative defenses and stated that it takes no position as to Claimant's request for expungement but objects to Claimant's request for any compensatory damages.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence Nos. [REDACTED] [REDACTED] and [REDACTED] from his CRD records; \$1.00 in compensatory damages; and such other relief deemed appropriate by the Arbitrator.

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

In the Statement of Answer, Respondent did not specifically delineate a relief request.

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

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

On or about December 7, 2018, Claimant filed with FINRA Office of Dispute Resolution proof of service upon the underlying customer in connection with Occurrence No [REDACTED] of the Statement of Claim in this matter, notice of the date and time of the upcoming expungement hearing and of the customer's right to participate therein. The customer did not submit a written response thereto.

Claimant did not provide notice to the underlying customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] because these customers are deceased.

The Arbitrator conducted a recorded in-person hearing on December 14, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement.

The customer in connection with Occurrence No. [REDACTED] did not participate in the expungement hearing.

With the Arbitrator's approval, Respondent participated in the expungement hearing telephonically and did not object to Claimant's expungement request.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the final Award issued by the New York Stock Exchange in connection with Occurrence No [REDACTED].

Respondent investigated the customers' complaints in connection with Occurrence Nos. [REDACTED] and [REDACTED] and found them to be without merit. Therefore, there are no settlement agreements for the Arbitrator to review.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement in connection with any of these Occurrences.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Exhibit Book and reliable testimony.

## AWARD

After considering the pleadings, the testimony and evidence presented at the recorded in-person hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of all references to Occurrence No. [REDACTED] from his CRD records is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Nos. [REDACTED] and [REDACTED] from registration records maintained by the CRD for Claimant (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 finding of fact with respect to both of these Occurrences:

The claim, allegation, or information is false.

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

Occurrence No. [REDACTED]

The customers were retired at the time they became Claimant's clients. They had an investment objective of growth and income, with moderate risk. They invested in stocks, bonds and mutual funds, which was consistent with their investment objectives. The account declined in value because the market suffered widespread declines and affected all sectors of the market.

When they filed their complaint with Respondent, Respondent investigated the issue and found the complaint to be without merit. The complaint is therefore reflected on the CRD as "closed/no action."

Occurrence No. [REDACTED]

The customer had a non-discretionary account in which he invested in stocks, bonds and mutual funds. The customer had final approval over all transactions in the account. Investments were made consistent with the customer's objective. The account declined in value because the market suffered widespread declines and affected all sectors of the market.

When the customer filed his complaint with Respondent, Respondent investigated the issue and thereafter denied the claim with no further action taken.

3. 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
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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: September 4, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: December 14, 2018	1 session

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Total Hearing Session Fees	= \$100.00
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The Arbitrator has assessed the total hearing session fees of \$100.00 to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

Herbert Branitsky

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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**



Herbert Branitsky  
Sole Public Arbitrator

1/7/19

Signature Date

1/11/2019

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