

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Securities America, Inc.

Hearing Site: San Francisco, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Michelle Atlas, Esq., HLBS Law, Westminster, Colorado.

For Respondent Securities America, Inc.: Chad E. Weaver, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 28, 2018.

████████████████████ signed the Submission Agreement: February 28, 2018.

Statement of Answer filed by Respondent on or about: March 28, 2018.

Securities America, Inc. signed the Submission Agreement: March 22, 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 a previously settled customer arbitration (Occurrence No. ██████████), involving investments in technology stocks and technology funds.

In the Statement of Answer, Respondent stated it does not oppose Claimant's request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of CRD Occurrence No. ██████████ from his records; compensatory damages of \$1.00; and any and all other relief deemed just and equitable.

In the Statement of Answer, Respondent requested: denial of Claimant's request for damages in the amount of \$1.00.

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

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

On or about November 13, 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 and date of the upcoming expungement hearing and of the customer's right to participate therein. The customer did not submit a written response thereto.

The Arbitrator conducted a recorded telephonic hearing on December 13, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement.

During the expungement hearing, Claimant withdrew his request for compensatory damages of \$1.00.

The underlying customer did not participate in the expungement hearing.

Claimant is currently an investor advisor and hasn't been registered with FINRA since 2008; therefore the Arbitrator reviewed the Investment Adviser Representative Public Disclosure Report for Claimant, and the Individual Snapshot Report dated January 9, 2018. Further, the Arbitrator reviewed Claimant's Affidavit filed on June 23, 2018, in which Claimant delineates his efforts to obtain a copy of the Release and Settlement Agreement pursuant to the Chair's Order dated June 23, 2018. Neither customer nor Respondent was able to provide the Release and Settlement Agreement, but Claimant represented that he was not a party to the settlement, and that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount, and that the settlement was said to have been made to avoid litigation cost.

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: all pleadings and exhibits filed; and Claimant's reliable testimony.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, and the post-hearing submissions, if any, 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 No. [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:

The claim, allegation, or information is false.

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

The allegations of unsuitability were misguided because the customer directed most of the portfolio purchases in his non-discretionary account against Claimant’s advice. No evidence was submitted that Claimant made unsuitable recommendations or purchases.

### **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: June 18, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
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Hearing Date: December 13, 2018 1 session

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Total Hearing Session Fees =\$ 100.00

The Arbitrator has assessed the entire hearing session fee of \$100.00 to Claimant.

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

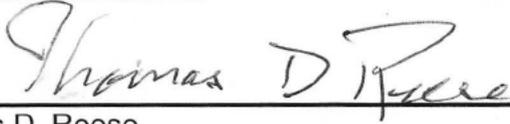
**ARBITRATOR**

Thomas D. Reese

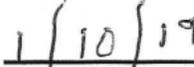
- Sole Public Arbitrator

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**



Thomas D. Reese  
Sole Public Arbitrator



Signature Date

1/11/2019

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