

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number ██████████

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Portland, Oregon

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Armin Sarabi, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Stuart D. Roberts, Esq., Bressler, Amery & Ross, PC, Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: September 26, 2017.
Claimant signed the Submission Agreement: September 27, 2017.

Statement of Answer filed by Respondent on or about: November 27, 2017.
Respondent signed the Submission Agreement: November 27, 2017.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: defamation and tortious interference with business expectancy. The causes of action related to Claimant’s allegation that Respondent defamed him in the Form U5 it filed as part of Claimant’s registration records maintained by the Central Registration Depository (the “CRD”) after Claimant’s employment with Respondent concluded.

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 all references to the false and defamatory statements in Claimant’s registration records maintained by the CRD, \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's claims be denied and that Claimant recover nothing from this proceeding.

On record at the hearing, Claimant's claim for \$1.00 in compensatory damages was withdrawn.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded, telephonic hearing on November 21, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing and contested the request for expungement.

The Arbitrator noted that Claimant's Form U5 records referenced customer complaints. Accordingly, the Arbitrator reviewed Claimant's BrokerCheck Report and heard testimony regarding the underlying complaints.

In recommending expungement, the Arbitrator relied upon the exhibits submitted by both parties, including records, hand written notes, and e-mails.

AWARD

After considering the pleadings, the testimony, and the 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 the "Yes" answers to Questions 7B and 7(F)(1), on [REDACTED] Amended Form U5 filed by Respondent on July 25, 2012, and maintained by the CRD. The "Yes" answers shall be changed to "No" and the accompanying Internal Review and Termination Disclosure Reporting Pages shall be deleted in their entirety.

The Arbitrator further recommends expungement of the "Yes" answer to Question 14(J)(1) on [REDACTED] Amended Form U4 filed on August 23, 2012 by UBS Financial Services, Inc., and maintained by the CRD. The "Yes" answer shall be changed to "No" and the accompanying disclosure reporting page shall be deleted in its entirety. These recommendations apply to all subsequent disclosures concerning this event.

In furtherance of the above recommendations, 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 finding of fact as to the above occurrences:

- The claim, allegation, or information is factually impossible or clearly erroneous.

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

In this case, the Respondent acknowledged that erroneous information was entered on Claimant's U-4 and is reflected in the Broker Check. Claimant was not permitted to resign; he voluntarily left the firm. The parties stipulated that the documents need to be amended to reflect the voluntary departure.

There were other matters that perhaps could best be described as ambiguities in the evidence. For example, Respondent offered three matters it believed were evidence of unauthorized trading. Only one matter is cited on the BrokerCheck and it appears that Claimant did not contribute to that settlement. Of the other two examples Respondent offered, one customer kept the securities in the account and did not contest the trades. It should be noted in this regard that Claimant was not investigated while at Respondent's firm; the investigation did not take place until after Claimant left and Respondent began to contact Claimant's customers.

The other case not mentioned on the BrokerCheck had to do with a customer calling and indicating that more shares of an IPO than the customer expected had been purchased for the customer's account. The customer intended to participate in the IPO purchase. This could easily have been an execution error, whether institutional or systemic, due to a day which the parties agreed was "crazy" as the IPO had so much interest that the trading system broke down due to volume. There was no proof that the over-purchase was intentional or negligent on Claimant's part. This could be analogous to the misreporting of Claimant's departure status. The customer's account was corrected and no harm was incurred.

Therefore, the Arbitrator finds that the claim, allegation, or information were clearly erroneous, with no basis in fact and the information has no meaningful investor protection or regulatory value.

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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Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

August 16-17, 2018, postponement requested by Claimant	=\$ 50.00
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Total Postponements Fees	=\$ 50.00
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The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

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:

Three (3) pre-hearing sessions with a single arbitrator @ \$50.00/session	=\$ 150.00
Pre-hearing conferences: January 22, 2018	1 session
July 9, 2018	1 session
August 16, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: November 21, 2018	1 session

Total Hearing Session Fees	=\$ 200.00
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The Arbitrator has assessed \$200.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Daniel M. Yamshon

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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



Daniel M. Yamshon
Sole Public Arbitrator

January 14, 2019
Signature Date

January 14, 2019

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