

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: Richmond, Virginia

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D., and Christopher Cummins, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: March 1, 2018.

Amended Statement of Claim filed on or about: June 12, 2018.

Claimant filed the undated Submission Agreement on or about: March 1, 2018.

Statement of Answer filed by Respondent on or about: April 20, 2018.

Respondent signed the Submission Agreement: April 30, 2018.

CASE SUMMARY

In the Statements of Claim, Claimant asserted a claim seeking expungement of an NASD Arbitration case, occurrence number ██████████ and a customer complaint, occurrence number ██████████, (“Underlying Claims”) from her Central Registration Depository (“CRD”) records.

In the Statement of Answer, Respondent advised that while it does not take a position as to Claimant’s request for expungement, it objects to Claimant’s request for compensatory damages.

RELIEF REQUESTED

In the Statements of Claim, Claimant requested:

1. Expungement of the Underlying Claims from her 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 occurrence number [REDACTED] from her 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 her 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 from Respondent; and
5. Any and all other relief the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested Claimant be precluded from an award of damages.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 12, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing were served on the customer in occurrence number [REDACTED] ("Mr. L"). On July 5, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that Mr. L was served with the Statement of Claim. On October 18, 2018, Claimant submitted a follow-up service letter to Mr. L.

On October 18, 2018, Claimant submitted a death certificate and obituary for the customer in occurrence number [REDACTED] ("Dr. K").

The Arbitrator conducted a recorded telephonic hearing on October 26, 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 oppose the request for expungement. Mr. L did not appear at the expungement hearing. The Arbitrator found that Mr. L had notice of the expungement hearing.

On November 29, 2018, the Arbitrator issued a post-hearing Order, requiring proof of service on the power of attorney for Dr. K, ("Mr. G") of the Statement of Claim and all exhibits introduced into evidence at the expungement hearing conducted on October 26, 2018. The post-hearing Order further directed Claimant's notice to Mr. G provide that he would have 10 days from the date of service of such notice to provide a written objection to Claimant's request for expungement.

On December 17, 2018, Claimant submitted proof of service on Mr. G.

On January 7, 2019, the Arbitrator reviewed the proof of service and found that Mr. G was properly served with the Statement of Claim, all exhibits and notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that occurrence number [REDACTED] was not settled, and therefore there were no settlement documents to review. In addition, the Arbitrator reviewed the NASD Arbitration Award related to occurrence number [REDACTED] and noted that Claimant was not a party to that case.

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 BrokerCheck® Report; Certificate of Service of the Amended Statement of Claim seeking expungement; Certificate of Service of Notice of Expungement; the death record and obituary for Dr. K; and the NASD Arbitration Award in occurrence number [REDACTED].

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, 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 the Underlying Claims, 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

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

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

Occurrence Number [REDACTED] (in which Dr. K was the customer)

In 1992, Dr. K and her son, who had a power of attorney for Dr. K, met with Claimant. Dr. K was looking for growth and income for her existing investment account. After several visits, Claimant recommended that Dr. K consider having a portfolio manager investment account and gave Dr. K the names of several portfolio managers at Respondent's bank. Dr. K and her son selected a portfolio manager. Subsequent to the selection of a portfolio manager, Claimant had little or no input with respect to management of Dr. K's account.

In light of Claimant's testimony, in combination with the fact that Dr. K's portfolio was managed by a portfolio manager at Respondent's bank, and not Claimant, it is clear that Claimant was not involved in the alleged investment-related sales practice violation.

Occurrence Number [REDACTED] (in which Mr. L was the customer)

Prior to 2000, Mr. L became a client of Respondent. Claimant testified that she had no recollection of any contact with Mr. L, making any recommendations to Mr. L, speaking to Mr. L or making any trades on behalf of Mr. L. Her belief is that the Mr. L account had been transferred from another broker to her, without her knowledge or notice. Claimant further testified that she was a practitioner of memory techniques, and that she taught the techniques in one of her son's classes and would have remembered dealing with Mr. L. Claimant had an ability to recall details, and she testified that she had no contact with Mr. L.

Claimant's counsel represented that there were no records available from Respondent concerning the account. Respondent confirmed that there were no records available, due to the document retention policy and the age of the occurrence.

In January 2000, Mr. L placed Respondent on notice of a claim of inappropriate recommendations, though it was not filed with the NASD. In September 2000, Respondent denied the claim. From Claimant's BrokerCheck® Report, it appears that Mr. L took no further action on the claim post denial by Respondent.

Based on Claimant's testimony, the claim of Mr. L is factually impossible. As such, the Arbitrator is recommending expungement.

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

**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 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 26, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: October 26, 2018	1 session

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

Joseph J. Dougherty

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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



Joseph J. Dougherty
Sole Public Arbitrator

1/11/19

Signature Date

January 11, 2019

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