

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

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Newark, New Jersey

PNC Investments

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED]: Dochter Kennedy, JD, MBA, AdvisorLaw, LLC, Westminster, Colorado.

For Respondent PNC Investments: Frederic L. Lieberman, Esq., Seyfarth Shaw LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 15, 2018.

[REDACTED] signed the Submission Agreement: May 15, 2018.

Statement of Answer filed by Respondent on or about: July 19, 2018.

PNC Investments signed the Submission Agreement: July 11, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested the following:

1. expungement of occurrence number [REDACTED] from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegations, or information is factually impossible or clearly erroneous;
2. expungement of occurrence number [REDACTED] from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegations, or information is false;
3. an award of compensatory damages in the amount of \$1.00; and
4. any and all other relief that the Arbitrator deems just and equitable.

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

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

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

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customer related to occurrence number [REDACTED] of the expungement request and of her right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The Arbitrator conducted a recorded telephonic expungement hearing on December 6, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

At the hearing, Claimant withdrew his request for compensatory damages.

The customer did not participate in the expungement hearing and did not contest the request for expungement.

Respondent participated in the expungement hearing, but did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents related to occurrence number [REDACTED], considered the amount of payments made to the customer, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim, Respondent's Statement of Answer, [REDACTED] BrokerCheck® Report, the settlement agreement related to occurrence number [REDACTED], and the testimony and evidence presented at the telephonic expungement hearing.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

## AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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:

The claim, allegation, or information is false.

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

The customer alleged that Claimant, while a Financial Advisor with Respondent, gave her "inappropriate advice by instructing that she surrender a variable annuity". At the hearing, Claimant testified that he recommended against surrendering the annuity. He testified that he explained to the customer the disadvantages of surrendering the annuity, including surrender charges, and that she could withdraw 10% without incurring a penalty.

Claimant's testimony was supported by his typewritten notes that "client stated that she makes her own decisions". Claimant's notes specifically reflect that he "[r]ecommended the client not do that [surrender the annuity] and only do the 10% if she wanted cash." Claimant's notes also reflect other unrelated instances where the customer decided not to follow Claimant's recommendations.

Claimant's handwritten notes also reflect his conversation with the customer regarding her questions concerning the annuity.

Claimant's testimony was further supported by the fact that the customer and Claimant met or spoke with each other on at least six (6) occasions following the surrender of the annuity but the customer did not claim that Claimant gave her inappropriate advice until a June 27, 2015 meeting that the customer's husband joined.

Based on the foregoing testimony and documentary evidence, I find that the instant claim, allegation or information against Claimant is false, pursuant to FINRA Rule 2080(b)(1)(C).

2. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, 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 that employed the associated person at the time of the event(s) giving rise to the dispute. Accordingly, as a party, PNC Investments is assessed the following:

Member Surcharge = \$ 150.00

#### **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, 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: September 17, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: December 6, 2018 1 session

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Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

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

**ARBITRATOR**

Annamaria Boccia Smith

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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**

Annamaria Boccia Smith

Annamaria Boccia Smith  
Sole Public Arbitrator

January 15, 2019  
Signature Date

**January 15, 2019**

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