

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Waddell & Reed

Hearing Site: Houston, Texas

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Michelle Atlas, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Waddell & Reed (“Respondent”): Carolyn A. Browne, Esq., Bryan Cave LLP, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: February 9, 2018.
Claimant signed the Submission Agreement: February 9, 2018.

Statement of Answer filed by Respondent on or about: April 4, 2018.
Respondent signed the Submission Agreement: April 11, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers ██████████ and ██████████, from her registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim to the extent any were made against Respondent, asserted various affirmative defenses, and took no position on Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers ██████████ and ██████████ from her CRD, \$1.00 in compensatory damages, and any and all other relief as the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant’s request for \$1.00 in

compensatory damages be denied and such other and further relief as the Arbitrator deems just and proper under the circumstances.

On record at the hearing, Claimant withdrew her request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 8, 2018, Claimant filed a copy of the obituary and death record (collectively "Death Record") for the customer related to Occurrence Number [REDACTED] ("Customer A") and a copy of the letter sent to the customer for Occurrence Number 1481438 ("Customer B"), providing her with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing ("Notice Letter"). On or about October 16, 2018, Claimant's counsel filed an Affidavit of Service ("Affidavit of Service") for the Notice Letter sent to Customer B. On or about October 24, 2018, Claimant filed a copy of the follow-up letter ("Follow-Up Notice Letter") sent to Customer B notifying her of the new time for the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on November 12, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing. The Arbitrator took judicial notice that Customer A is deceased and could not participate in the hearing. Customer B did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts.

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: Statement of Claim, Claimant's testimony, Notice Letter, USPS Tracking Numbers showing delivery of the Notice Letter, Affidavit of Service, Follow-Up Notice Letter, Death Record, Claimant's BrokerCheck® Report, Respondent's Statement of Answer to the underlying claim for Customer B, the parties' Joint Stipulation and Confidentiality Agreement, the settlement agreements for Customers A and B, the Client Profile for Customer A dated February 2, 2003, Respondent's letter to Customer A dated August 13, 2003, and the complaint letter filed by Customer A's son dated February 5, 2003.

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 all references to Occurrence Number [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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

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

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

The Arbitrator is satisfied that Customer A had full knowledge and understanding of her transactions with Respondent and Claimant. The evidence revealed Claimant personally discussed Customer A's investments with her. The evidence did not reveal any unsuitable recommendations by Claimant to Customer A. Customer A was fully informed of the nature of the transactions and the risks involved. On February 5, 2003, Customer A's son filed a written complaint against Claimant and Respondent alleging the unsuitability of his mother's investments. Customer A and Respondent settled the complaint. An arbitration claim was not filed. Claimant did not enter into a settlement agreement with Customer A or contribute to any settlement of the complaint. Customer A remained a client of Claimant.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [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:

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

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

The Arbitrator is satisfied Customer B had full knowledge & understanding of her transactions with Respondent and Claimant. The evidence shows Claimant personally discussed the investments with Customer B. The evidence did not reveal any unsuitable recommendations by Claimant to Customer B. Customer B was fully informed of the nature of the transactions and the risks involved. In 2008, Customer B unilaterally made the decision to liquidate her accounts during the market downturn without consulting Claimant and against the recommendation of Respondent. Customer B suffered an economic loss when liquidating her investments. Customer B thereafter filed an arbitration claim against Respondent. Claimant was not a named party in the arbitration proceeding. Customer B and Respondent settled the arbitration dispute. Claimant did not enter into a settlement agreement with Customer B or contribute to any settlement of the complaint.

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 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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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) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: November 12, 2018 1 session	

Total Hearing Session Fees	= \$ 50.00
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The Arbitrator has assessed \$50.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Sherry R. Wetsch

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



Sherry R. Wetsch
Sole Public Arbitrator

1-18-19

Signature Date

January 18, 2019

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