

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Ameriprise Advisor Services, Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Michelle Atlas, Esq. and Docthor Kennedy, J.D., MBA, AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Ameriprise Advisor Services, Inc. ("Respondent"): Howard M. Klausmeier, Esq., Ameriprise Financial, Troy, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: July 30, 2018.

Claimant signed the Submission Agreement: July 30, 2018.

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

Respondent signed the Submission Agreement: September 19, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two customer disputes from his Central Registration Depository ("CRD") record: an NASD Arbitration, occurrence number ██████████ and a customer complaint, occurrence number ██████████ ("Underlying Claims").

In the Statement of Answer, Respondent advised that it does not object and will concur in the request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his 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 the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
 3. Compensatory damages in the amount of \$1.00 from Respondent; and
 4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. In accordance with FINRA Rule 2080 and Rule 12805 of the Code of Arbitration Procedure ("Code"), a recommendation for the expungement of the Underlying Claims from Claimant's CRD record;
2. Denial of all requested damages against Respondent; and
3. Assessment of all costs and fees against Claimant that have been or will be incurred by Respondent, including but not limited to the member surcharges and hearing fees, relating to this arbitration matter.

At the close of the hearing, Claimant withdrew his request for \$1.00 in compensatory damages from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 20, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on the daughter ("Ms. W") of the customer in occurrence number [REDACTED] ("Mr. C"). Claimant also submitted a death record for Mr. C.

On the same date, Claimant submitted an Affidavit of Dochter Kennedy, signed by Claimant's counsel, advising that Claimant's counsel completed a search of the public records but could not locate a valid address for the customer in occurrence number [REDACTED] ("Mr. B"). Counsel further advised that Respondent was unable to provide any new information to assist with the search. The Arbitrator found that Claimant made sufficient efforts to provide notice to Mr. B.

On November 28, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that Ms. W had been served with the Statement of Claim but could not serve Mr. C as a public record service indicated that Mr. C is deceased.

On the same date, Claimant submitted an Affidavit of Michelle Atlas, Esq. regarding the settlement agreement in occurrence number [REDACTED], advising that Claimant was not a party to any settlement agreement and does not have a copy of the settlement agreement and that Claimant requested a copy of any settlement document from Respondent in discovery, but that no responsive documents were available.

The Arbitrator conducted a recorded telephonic hearing on November 30, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not contest the request for expungement. Ms. W did not participate in the expungement hearing and the Arbitrator found that she had proper notice of the hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator noted that there was a settlement in occurrence number [REDACTED], however after a diligent search the parties could not locate the settlement agreement. Based on Claimant's testimony, the Arbitrator found that Claimant was no longer with the Respondent when the arbitration was settled and Claimant did not contribute to the settlement amount. The Arbitrator noted that the arbitration was settled for \$4,900.00, which was a non-reportable amount in 1998. Based on the testimony of Claimant and Respondent, the Arbitrator also noted that the settlement was not conditioned on Mr. B not opposing the request for expungement.

The Arbitrator noted that there was no settlement in occurrence number [REDACTED] and therefore no settlement documents for him to review.

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: oral testimony of Claimant.

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 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:

Occurrence Number [REDACTED] (in which Mr. B is the customer)

Mr. B claimed that Claimant failed to follow his instructions and “did not sell his stocks when they declined [ten] percent, that [Claimant] urged [Mr. B] to hold on to stocks in a dropping market, that [Mr. B] lost money using margin[,] and that [Claimant’s] recommendations were based on wrong information. . .” (See Statement of Claim, para.15 and CRD record). The claim was settled for \$4,900, which was a non-reportable amount in 1998. (See Affidavit of Michelle Atlas, Esq.) Claimant was no longer with the firm and did not contribute to settlement.

The Arbitrator questioned Claimant at length. Claimant noted that Mr. B was a wealthy, experienced investor, who opened a non-discretionary account and made many of his own decisions. The Arbitrator found Claimant’s testimony to be highly credible. He was the only witness in a case that was 20+ years old and the Arbitrator based his decision to grant expungement on such documentation that was available and his examination of the Claimant. The Arbitrator found the allegations in the NASD arbitration to be clearly erroneous or false.

Occurrence Number [REDACTED] (in which Mr. C is the customer)

Mr. C was an experienced investor. While Mr. C was interested in discussing different options with Claimant, he did not often wish to act upon Claimant’s suggestions. Verbal authorization without discretion was the standard protocol. Mr. C’s portfolio increased during the time Claimant was the advisor of record for Mr. C’s account. Mr. C never expressed any concerns with or about Claimant. In 1997, Claimant voluntarily resigned from Respondent and transferred to UBS Financial Services. Mr. C died in 2003. In 2005, Mr. C’s daughter, Ms. W, alleged “inappropriate margin use and unsuitability in connection with unspecified transactions occurring between 1996 and 2000.” Claimant never had any contact with Ms. W. In 2006, Respondent informed Claimant that Ms. W had not taken any action in pursuit of this matter for over one year. This customer dispute is listed on Claimant’s CRD as “Closed/No Action”.

The Arbitrator found Claimant’s testimony to be highly credible. He was the only witness in a case that was 20+ years old and the Arbitrator based his decision to grant expungement on such documentation that was available and his examination of the Claimant.

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

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: November 6, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: November 30, 2018 1 session

Total Hearing Session Fees = \$100.00

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

Carl Shechter

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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



Carl Shechter
Sole Public Arbitrator

1-23-19

Signature Date

January 24, 2019

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