

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

GunnAllen Financial, Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Eric Litow, Esq., HLBS Law, Westminster, Colorado.

Respondent GunnAllen Financial, Inc. ("GunnAllen") did not appear in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: May 29, 2018.

██████████ signed the Submission Agreement: May 29, 2018.

Respondent GunnAllen did not file a Statement of Answer and did not sign the Submission Agreement.

**CASE SUMMARY**

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two previously settled customer arbitrations (Occurrence No. ██████████ and Occurrence No. ██████████).

The cause of action in Occurrence No. ██████████ relates to the customer's investments in the equities markets.

The cause of action in Occurrence No. ██████████ relates to the customer's investments in Denderon Corp. shares; closed-end income funds; stocks in technology; solar; biotechnology; and energy sectors.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of all references to Occurrence No. ██████████ and Occurrence No. ██████████ from his CRD records; compensatory damages of \$1.00; and any and all relief deemed just and proper.

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

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

On or about December 21, 2018, Claimant filed with FINRA Office of Dispute Resolution a notice of service upon the underlying customers of the Statement of Claim in this matter, notice of the date and time of the upcoming expungement hearing and the customers’ right to participate therein. The customer in connection with Occurrence No. [REDACTED] did not submit a written response.

On or about June 26, 2018, the customer in connection with Occurrence No. [REDACTED] filed an Affidavit stating that he supported Claimant’s request for expungement.

On or about January 8, 2019, Claimant filed with FINRA Office of Dispute Resolution an Affidavit regarding service of the Statement of Claim upon the underlying customers.

The Arbitrator conducted a recorded telephonic hearing on January 22, 2019, so the parties could present oral argument and evidence on Claimant’s request for expungement. Respondent did not participate in the expungement hearing. During the expungement hearing, Claimant withdrew his request for compensatory damages of \$1.00.

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 settlements. The Arbitrator noted that the settlements were not conditioned on customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts; and that Claimant was not involved in the decision as to the amount of the settlements and he wanted to continue with the litigation and arbitration hearing.

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: 17 (seventeen) Exhibits filed, with some Exhibits being more important than others; for example, Exhibits 2, 3 and 4 signed by the customer in connection with Occurrence No. [REDACTED] Exhibits 6, 7, 14 and 15 signed by the customer in connection with Occurrence No. [REDACTED]; the confirmations and communications sent to the customer in connection with Occurrence No. [REDACTED] Exhibits 10-12); Claimant’s testimony; Statement of Claim; and correspondence with the two customers.

## AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, and the post-hearing submissions, 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 No. [REDACTED] and Occurrence No. [REDACTED] from registration records maintained by the CRD for Claimant (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 findings of fact with respect to both Occurrences:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

### **Occurrence No. [REDACTED]**

According to the testimony, this hearing involves two different customers and two different Occurrence Numbers. The first customer in connection with Occurrence No. [REDACTED] was referred to Claimant by another broker, and eventually Claimant handled the account. The incidents of alleged churning, happened in 2004-2005. Claimant testified that he had many conversations with the customer on an as needed basis, sometimes weekly calls, and there were weeks when calls were not necessary. After each trade, the sale was confirmed by a third party on a recorded call. These were nondiscretionary accounts and the customer's approval for all transactions was obtained. Claimant felt he had a good relationship with his client and was surprised when the account was abruptly closed. There was no communication from the customer. In fact, the Statement of Claim was not filed until 2008 and Claimant learned of the arbitration from FINRA. Claimant testified he wanted to go to arbitration but Respondent settled the case. The uncontroverted testimony was that the claim was false and clearly erroneous.

### **Occurrence No. [REDACTED]**

The testimony as to the second customer in connection with Occurrence No. [REDACTED], was a sophisticated investor with over 30 years of experience when he became a client of Claimant. Claimant testified as to the same procedures that he followed in making sure the customer approved all the transactions and a third party

confirmed the approval of all transactions on a recorded line. He also described the many phone calls he had with the customer over the accounts and the "financial crisis." The customer did not complain or object to any activity in his accounts to Claimant. It is of interest that the customer is still a client of Claimant. Claimant testified he wanted to go to arbitration but Respondent settled the case. The uncontroverted testimony was that the claim was false and clearly erroneous.

The testimony, documents reviewed by the Arbitrator and the argument of counsel demonstrated that Claimant has met the burden of proving that the Unopposed Statement of Claim for Expungement is warranted based on FINRA Rule 2080 (a) and (c).

### **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(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(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: October 16, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: January 22, 2019	1 session

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Total Hearing Session Fees	= \$100.00
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The Arbitrator has assessed the entire hearing session fees of \$100.00 to Claimant.

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

**ARBITRATOR**

Kimberly A. Gilmour

- 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**



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Kimberly A. Gilmour  
Sole Public Arbitrator



\_\_\_\_\_  
Signature Date

1/25/2019

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