

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: Salt Lake City, Utah

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D. and Harris Freedman, 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: July 5, 2018.
Claimant signed the Submission Agreement on: July 7, 2018.

Statement of Answer filed by Respondent on or about: August 27, 2018.
Respondent signed the Submission Agreement on: August 27, 2018.

CASE SUMMARY

Claimant requested expungement of a customer complaint (“Underlying Complaint”), occurrence number ██████████, from his Central Registration Depository (“CRD”) record.

In the Statement of Answer, Respondent advised that while it does not take a position on Claimant’s request for expungement, it objects to Claimant’s request for compensatory damages and provided further affirmative and other defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

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

At the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 28, 2018, Claimant provided a copy of his notice to the customer in the Underlying Complaint ("Customer") regarding the Statement of Claim and notice of the expungement hearing. On November 29, 2018, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on January 17, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Customer did not appear at the expungement hearing. The Arbitrator found that the Customer had notice of the expungement hearing.

On January 17, 2019, Respondent provided a copy of Claimant's response to the Underlying Complaint dated September 28, 2018 ("Claimant's Response") pursuant to the Arbitrator's request during the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator determined that the Underlying Complaint was denied (not settled) and therefore there were no settlement agreements to review.

The Arbitrator noted that Claimant did not previously request expungement of the Underlying Complaint.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Statement of Claim;
- Statement of Answer;
- Claimant's BrokerCheck® Report;
- Exhibit 3 – Customer's complaint letter dated August 11, 2017;

- Exhibit 4 – Merrill Lynch Wealth Management’s letter dated October 9, 2017 to the Customer denying the complaint (“Denial Letter”); and
- Claimant’s Response.

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 Complaint, occurrence number [REDACTED], from Claimant [REDACTED] [REDACTED] (CRD# [REDACTED]) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Claimant [REDACTED] [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 claim, allegation, or information is false.

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

The Customer was interested in an aggressive portfolio, which allowed for total returns. The purchase of the Puerto Rico Municipal Bonds (“the Bonds”) were within the Customer’s stated investment objective and risk tolerance. The Bonds had the potential for above average returns. The Customer was fully apprised by Claimant of the risk in investing in these Bonds. Claimant also recommended that the Customer sell his high-yield bond fund as a way of decreasing the overall risk in his portfolio. The proceeds from the sale were to be used to purchase the Bonds.

After several meetings between Claimant and the Customer to review the investment opportunity and documentation, as well as positive recommendations from the Customer’s brother-in-law (who was Claimant’s business partner) and the Customer’s son (who worked with Claimant), the Customer proceeded to make a \$35,000 investment in the

Bonds. At the time of purchase, the Bonds only represented 0.05% of the Customer's total portfolio according to the Denial Letter.

A review of Claimant's BrokerCheck® Report and the Denial Letter is further indication that Claimant was in compliance with FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C).

Finally, according to Respondent's Statement of Answer, the Customer did not pursue his complaint further either via arbitration or litigation following the denial of his claim.

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
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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 22, 2018	1 session

One (1) Hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Dates: January 17, 2019	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

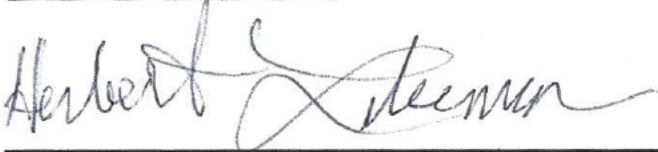
Herbert Liberman

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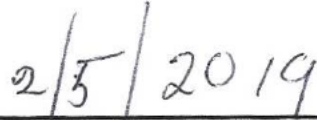
Sole Public Arbitrator

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



Herbert Liberman
Sole Public Arbitrator



Signature Date

February 5, 2019

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