

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Eric Litow, Esq., Of Counsel to HLBS Law, Westminster, Colorado and Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Andrew M. DeLucia, Esq., Rubin, Fortunato & Harbison P.C., Paoli, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on or about: April 18, 2018.

Claimant signed the Submission Agreement: April 18, 2018.

Statement of Answer filed by Respondent on or about: June 15, 2018.

Respondent signed the Submission Agreement: June 28, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a termination disclosure from his Form U5, alleging that the disclosed information is defamatory in nature.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. An award granting expungement of occurrence number ██████████ from his Form U5 and those relevant portions of the Form U4 from Claimant’s Central Registration Depository (“CRD”) records on the basis that the statements are

- allegedly false and defamatory in nature, misleading, inaccurate, or erroneous;
2. Amendment to the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary";
3. Subsequent expungement of the Reason for Termination on Claimant's BrokerCheck® Report;
4. Amendment of the answers to Questions 7B, 7E(2), 7F(1), and 7F(2) on Claimant's Form U5 to "No", and deletion of the accompanying Internal Review and Termination Disclosure Reporting Pages in their entirety; and
5. In the alternative, Claimant requested the language that is allegedly defamatory in nature be amended to "Claimant approved a management account for a purchase of two items for a total of \$90.00 plus \$13.00 in sales tax, for a sales market manager who misled Claimant when seeking approval."

In the Statement of Answer, Respondent requested:

1. Claimant's Statement of Claim be denied in its entirety;
2. All costs be assessed against Claimant;
3. An Award of its attorneys' fees and costs; and
4. All other relief that the Panel deems reasonable and appropriate under the circumstances of this case.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

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 hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of the Termination Explanation in Section 3 of the Form U5 filed by Respondent Merrill Lynch Pierce Fenner & Smith Inc. on December 16, 2016 for Claimant [REDACTED] (CRD# [REDACTED] maintained by the CRD. The Termination Explanation shall be changed to:

Approval of subordinate's corporate credit card expensing, two transactions totaling \$216.66, inconsistent with Firm standards, and use of unapproved third party application on personal cell phone to communication with associates on non-business related matters.

The Reason for Termination shall remain the same.

In addition, the Panel recommends that the answer to Question 7F(1) be changed to "No" in the Form U5 of Claimant [REDACTED] (CRD# [REDACTED] filed by Respondent Merrill Lynch Pierce Fenner & Smith Inc. on December 16, 2016 and the

accompanying Disclosure Reporting Page be deleted in its entirety.

The above recommendations are based on the defamatory nature of the information and shall apply to all subsequent disclosures concerning these events, including but not limited to, the Initial Form U4 filed by Cetera Advisor Networks LLC on March 31, 2017.

The registration records are not automatically amended to include the changes indicated above. Claimant [REDACTED] must forward a copy of this Award to FINRA's Registration and Disclosure Department for review.

2. Any and all claims for relief not specifically addressed herein, including Respondent's request for attorneys' fees, 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	= \$ 1,575.00
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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	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

#### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: August 13, 2019 1 session	

One (1) hearing session with the Panel @ \$1,125.00/session	= \$1,125.00
Hearing Date: February 11, 2019 1 session	

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Total Hearing Session Fees	= \$2,250.00
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The Panel has assessed \$2,250.00 of the hearing session fees to Respondent.


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

**ARBITRATION PANEL**

Richard M. Norman	-	Public Arbitrator, Presiding Chairperson
Norman Michael Garland	-	Public Arbitrator
David S. Harrison	-	Non-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.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Richard M. Norman  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Norman Michael Garland  
Public Arbitrator

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

\_\_\_\_\_  
David S. Harrison  
Non-Public Arbitrator

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

April 17, 2019  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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Norman Michael Garland  
Public Arbitrator  
\\s\ Norman M. Garland

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

4/8/2019

\_\_\_\_\_  
David S. Harrison  
Non-Public Arbitrator

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

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Norman Michael Garland  
Public Arbitrator

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

**David**  
**Harrison, Esq.**  
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David S. Harrison  
Non-Public Arbitrator

Digitally signed by David  
Harrison, Esq.  
Date: 2019.04.08 12:11:00  
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Signature Date

April 17, 2019  
Date of Service (For FINRA Office of Dispute Resolution office use only)