

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondent

Hearing Site: New Orleans, Louisiana

Merrill Lynch Pierce Fenner & Smith Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Erica Harris, Esq., and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. ("Respondent"): W. Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: December 24, 2018.
Amended Statement of Claim on or about: February 5, 2019.
Claimant signed the Submission Agreement: December 20, 2018.

Statement of Answer filed by Respondent on or about: February 21, 2019.
Respondent signed the Submission Agreement: February 21, 2019.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a customer complaint, occurrence number [REDACTED] ("Underlying Complaint") from her Central Registration Depository ("CRD") records.

In the Amended Statement of Claim, Claimant included additional factual allegations.

In the Statement of Answer, Respondent advised that it takes no position on Claimant's expungement request but objected to Claimant's request for \$1.00 in compensatory damages and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and the Amended Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from her CRD records 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 her CRD records 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 did not set forth a separate relief request.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 19, 2019, Claimant provided notice that a copy of the Amended Statement of Claim and notice of the expungement hearing on the customer in the Underlying Complaint ("Customer").

On August 21, 2019, the Customer submitted an opposition to Claimant's expungement request.

The Arbitrator conducted a recorded telephonic hearing on August 22, 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 participate in the expungement hearing, but as stated in the August 21 submission, opposed the expungement request.

On August 26, 2019, pursuant to the Arbitrator's request at the hearing, Claimant's counsel filed a statement regarding their efforts to obtain a copy of the settlement agreement in the Underlying Complaint, advising that Claimant was not a party to the settlement agreement, did not contribute to the settlement amount and did not receive or sign the settlement agreement. Claimant's counsel further advised that they requested the settlement agreement from Respondent but Respondent advised that the settlement agreement could not be located.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator did not review the settlement documents but the Arbitrator found that Claimant made sufficient efforts to locate the settlement documents but was unable to secure them due to the passage of time. Based on Claimant's testimony and a review of the BrokerCheck® Report, the Arbitrator considered the amount of payments made to any party. The Arbitrator noted that the settlement of \$60,000.00 was made to avoid the

cost of litigation and that Claimant did not contribute to the settlement amount. The Arbitrator noted that as she could not review the terms of the settlement agreement, she could not confirm whether the settlement was not conditioned on the Customer not opposing the request for expungement. However, the Arbitrator found that the settlement at issue occurred before FINRA Rule 2081 became effective.

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 and Amended Statement of Claim; Statement of Answer; Respondent's August 14, 2001 letter to the Customer's counsel; the Customer's August 21, 2019 submission; and Claimant's BrokerCheck® Report.

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, 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 the Underlying Complaint, 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] 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 findings 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 findings based on the following reasons:

The Customer's allegation of unauthorized trading is false and clearly erroneous. The evidence, including the Customer's written comments, demonstrates that he agreed to verbally authorize transactions and that he received confirmation of each transaction made. Despite such notice and receiving monthly statements of his account, the Customer did not complain of any "unauthorized" trades or

otherwise question them until he initiated his complaint. The Customer maintained control of his accounts and his comments admit responsibility for some of the account's activity. He did not always agree with Claimant's recommendations and often chose investments with greater risk, such as when he rejected a recommendation to invest in an annuity because he preferred technology stocks.

Further, the Customer was a "fairly aggressive" investor who accepted risk to achieve growth. Accordingly, he chose some of the investments in his account contrary to what Claimant had recommended. Claimant warned the Customer about overconcentration but the Customer was comfortable with his portfolio and ignored her advice.

The Arbitrator found that Claimant's investment recommendations which the Customer followed were suitable for the Customer. The Arbitrator noted that suitability is determined at the time an investment is made, a subsequent diminution in value does not indicate the quality or suitability of the investments at the time they were made.

Claimant performed her duties as a representative in a thorough, ethical, and professional manner, and public disclosure of the false and clearly erroneous allegations made by the Customer does not offer any public protection and has no regulatory value.

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: May 29, 2019 1 session	

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

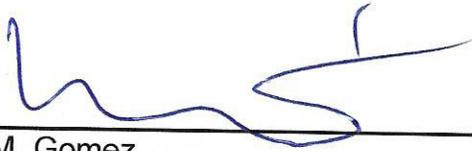
Lynne M. Gomez

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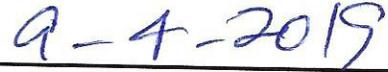
Sole Public Arbitrator

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



Lynne M. Gomez
Sole Public Arbitrator



Signature Date

September 5, 2019

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