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Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

American Portfolios Financial Services, Inc.

Hearing Site: Denver, Colorado

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent American Portfolios Financial Services, Inc. ("Respondent"): Frank A. Tauches, Jr., Esq., American Portfolios Financial Services, Holbrook, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 20, 2018.

Claimant signed the Submission Agreement: December 20, 2018.

Statement of Answer filed by Respondent on or about: February 13, 2019.

Respondent signed the Submission Agreement: January 3, 2019.

CASE SUMMARY

Claimant requested expungement of reference to a customer complaint ("Underlying Complaint"), occurrence number ██████████ from his Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondent advised that, while it is supportive of Claimant's request for expungement, it generally and specifically denies any and all claims of wrongdoing in connection with the Underlying Complaint, and rejects any and all of Claimant's claims for damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from his 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 his CRD records pursuant to FINRA Rule 2080(b)(1)(C) finding 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.

In the Statement of Answer, Respondent requested the Arbitrator issue a recommendation regarding Claimant's request for expungement; and denial with prejudice of Claimant's claim and demand for compensatory and other damages from Respondent.

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 June 5, 2019, 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 July 10, 2019, the Customer filed a response in opposition of Claimant's request for expungement ("Customer's July 10 Response").

The Arbitrator conducted a recorded telephonic hearing on July 25, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent appeared at the expungement hearing and did not oppose Claimant's request for expungement. The Customer appeared at the expungement hearing and opposed Claimant's request for expungement.

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 further noted that the Customer did not pursue his claim further after the Underlying Complaint was denied by Respondent.

The Arbitrator noted that Claimant did not previously request expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's oral testimony; Customer's oral testimony; Claimant's

BrokerCheck® Report; Customer's July 10 Response with exhibits; and Claimant's Hearing Exhibits 2-9, 14, 17-18 and 20.

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 Claimant, occurrence number [REDACTED] from Claimant [REDACTED] (CRD# [REDACTED] registration records maintained by the CRD, 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 claim, allegation, or information is false.

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

In the Underlying Complaint, the Customer alleged negligence, fiduciary misconduct and churning.

First, the Customer's account was a managed account for a fixed management fee. Thus, by definition, there could be no churning as there were no broker fees per trade.

Second, the Customer wanted to move his account from a variable annuity, where there was upside and downside, to a non-variable annuity. The Customer signed the respective documents which disclosed the fees associated with his request and specifically acknowledged that he understood that these fees would apply. Due to the fees charged for the Customer's request to move the account, there were less net funds in the account after the change of annuities was completed. The basis for the Underlying Complaint was that there was less net funds in the account after

the change; however, the Customer acknowledged in writing that he understood that such fees would apply and that the net funds would decrease due to the charges. In short, the Underlying Complaint was not due to any negligence and or fiduciary misconduct on the part of Claimant but due to the Customer's failure to carefully consider the fees associated with his request.

Finally, the Customer, though given the chance to offer exhibits and/or testimony to support the Underlying Complaint, offered no testimony at the expungement hearing and the two exhibits he offered in response to Claimant's expungement request, did not support the Underlying Complaint.

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: April 16, 2019	1 session

One (1) Hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: July 25, 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

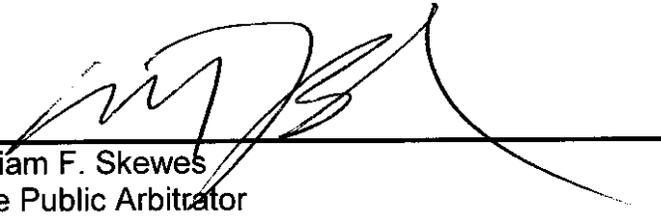
William F. Skewes

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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



William F. Skewes
Sole Public Arbitrator

August 12, 2019
Signature Date

August 13, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)