

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondents

Hearing Site: Hartford, Connecticut

A. G. Edwards & Sons, Inc.
RBC Capital Markets LLC

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [REDACTED]: Erica Harris, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent A. G. Edwards & Sons, Inc.: Demian J. Betz, Esq., Wells Fargo Law Department, Charlotte, North Carolina.

For Respondent RBC Capital Markets LLC: Frank J. Cuccio, Esq., Bressler, Amery & Ross, P.C., Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: February 6, 2018.

[REDACTED] signed the Submission Agreement: February 6, 2018.

Statement of Answer filed by Respondent A.G. Edwards & Sons, Inc. on or about: March 27, 2018.

Respondent A. G. Edwards & Sons, Inc. signed the Submission Agreement: March 27, 2018.

Statement of Answer filed by Respondent RBC Capital Markets LLC on or about: March 28, 2018.

Respondent RBC Capital Markets LLC signed the Submission Agreement: March 27, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

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

In the Statement of Answer, Respondent A.G. Edwards & Sons, Inc. took no position regarding Claimant's requested expungement relief.

In the Statement of Answer, Respondent RBC Capital Markets LLC did not oppose [REDACTED] Claim and had no objection to the relief sought.

At the close of the hearing, Claimant withdrew her demand for compensatory damages in the amount of \$1.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded in-person hearing on December 11, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Respondent RBC Capital Markets LLC did not participate in the expungement hearing and did not contest the request for expungement.

Claimant provided FINRA Office of Dispute Resolution with proof that she notified the customers in the underlying complaints of the expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The customers in the underlying complaints did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and 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: the pleadings, Claimant's BrokerCheck® Report and Claimant's testimony.

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. Claimant's request for expungement of Occurrence Number [REDACTED] from her CRD records is denied, principally due to the absence of any confirmatory evidence beyond the Claimant's testimony and a single, more generalized letter from the then employing broker. Customer confirmations and account statements are directly relevant to the nature of the allegations. Unfortunately, given the number of years that have elapsed – seventeen (17) years – neither the Respondent firm (under general industry record retention procedures) nor the Claimant had retained any such records. In the Arbitrator's view, Claimant's testimony did not overcome the absence of such records and consequently satisfy the burden of proof to establish that the allegations relevant to this occurrence either are clearly erroneous or false.
2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for Claimant [REDACTED] (CRD# [REDACTED]), 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The Arbitrator finds the customer's complaint as to unauthorized investments beyond an alleged previously agreed ratio and a decrease in said customer's wealth, is false. In addition to Claimant's testimony, the evidence presented included two reports from the employing broker with specific reference to the substance of the

customer's complaint. The Arbitrator concluded that the review undertaken by the employing broker's compliance department properly demonstrated that the allegations were not accurate, i.e., false.

3. Any and all claims for relief not specifically addressed herein is 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	= \$ 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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as parties, Respondents A.G. Edwards & Sons, Inc. and RBC Capital Markets LLC are each 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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: December 11, 2018 1 session	

Total Hearing Session Fees	= \$50.00
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The Arbitrator assessed \$50.00 hearing session fees to the Claimant.

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

ARBITRATOR

Robert Titus

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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

/s/ Robert B. Titus

Robert Titus
Sole Public Arbitrator

January 7, 2019

Signature Date

January 8, 2019

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