

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number: [REDACTED]

vs.

Respondents
Citigroup Global Markets, Inc.
J.W. Cole Financial, Inc.

Hearing Site: Tampa, Florida

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Dochtor Kennedy, Esq. and Eric Litow, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Citigroup Global Markets, Inc. ("Citigroup"): Kurt T. Kalberer, II, Esq., Bressler, Amery & Ross, P.C., New York, New York.

Respondent J.W. Cole Financial, Inc. did not appear.

CASE INFORMATION

Statement of Claim filed on or about: May 16, 2017.

[REDACTED] signed the Submission Agreement: July 6, 2017.

Statement of Answer to Amended Statement of Claim filed by Respondent Citigroup on or about: July 10, 2017.

Citigroup Global Markets, Inc. signed the Submission Agreement: July 10, 2017.

Second Amended Statement of Claim filed by Claimant on or about: July 27, 2017.

Statement of Answer to Second Amended Statement of Claim filed by Respondent Citigroup on or about: August 15, 2017.

J.W. Cole Financial, Inc. did not file a Statement of Answer nor sign the Submission Agreement.

Motion to Compel filed by Claimant on or about: November 29, 2017.

CASE SUMMARY

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to customer

disputes recorded on Claimant's CRD records regarding Occurrence Nos. [REDACTED] and [REDACTED]

In the Statement of Answer to the Statement of Claim, as amended, Respondent Citigroup denied any allegations of wrongdoing and stated that it did not oppose the requested expungement relief.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of all references to Occurrence Nos. [REDACTED] and [REDACTED] from his CRD records, \$1.00 in compensatory damages, and such other and further relief deemed just and equitable. Additionally, Claimant requested that if the Arbitrator does not recommend expungement of Occurrence No. [REDACTED] pursuant to Rule 2080, then the Arbitrator should recommend its removal, as it is duplicative of Occurrence No. [REDACTED]

In its Statement of Answer to the Statement of Claim, as amended, Respondent Citigroup requested denial of Claimant's request for \$1.00 in compensatory damages and that all forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about June 8, 2017, Claimant submitted a First Amended Statement of Claim that was withdrawn prior to service upon Respondents. All pleadings filed thereafter are referred to in this Award as the parties have labeled them.

Respondent J.W. Cole Financial, Inc. did not file with FINRA Office of Dispute Resolution a Statement of Answer or properly executed Submission Agreement. Inasmuch as Claimant removed J.W. Cole Financial, Inc. as a Respondent with the filing of its Second Amended Statement of Claim, the Arbitrator made no determinations with respect to Respondent J.W. Cole Financial, Inc.

On or about October 17, 2017, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim, as amended, and notice of the expungement hearing upon the underlying customers in Occurrence Nos. [REDACTED] and [REDACTED] and advised them of their right to participate in the expungement hearing scheduled for December 19, 2017. One of the underlying customers is deceased. Claimant therefore sent notice to that customer's next of kin.

Claimant filed a Motion to Compel in order to obtain, among other things, all settlement agreements in connection with the requests for expungement in this matter. Respondent Citigroup did not file a response. On or about December 13, 2017, the Arbitrator issued an Order granting Claimant's request and directing Respondent Citigroup to produce, among other things, all settlement agreements in connection with the expungement requests. On or about December 15, 2017, Respondent Citigroup

filed a notice with FINRA stating that based upon Respondent Citigroup's retention policies and regulatory rules, none of the documents ordered for production still exist.

The Arbitrator conducted a recorded telephonic hearing on December 19, 2017, so the parties could present oral argument and evidence on Claimant's expungement requests. During the hearing, Claimant withdrew his requests for \$1.00 in compensatory damages and all costs and fees.

Respondent Citigroup participated in the expungement hearing and did not contest the requests for expungement.

None of the underlying customers or next of kin in Occurrence Nos. [REDACTED] [REDACTED] and [REDACTED] participated in the expungement hearing and none objected to the expungement requests.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator was unable to review the settlement documents in connection with Occurrence Nos. [REDACTED] and [REDACTED] because they were not available through discovery. However, the Arbitrator did consider the amount of payments made to any party and noted that these settlements were not conditioned on the underlying customers not opposing the requests for expungement, which was affirmed by Claimant's testimony during the expungement hearing.

With regard to Occurrence No. [REDACTED] the Arbitrator noted that Claimant did not contribute to the settlement amount, which was affirmed by Claimant's testimony during the expungement hearing as well as the CRD report introduced into evidence at the hearing.

With regard to Occurrence No. [REDACTED] the Arbitrator noted that Claimant did contribute to the settlement amount, but the contribution was nominal and was considered in light of Claimant's testimony that he did not understand this would be part of his CRD record.

There was no settlement in connection with Occurrence No. [REDACTED] and therefore no settlement agreement for the Arbitrator to review.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of any of these Occurrence Nos. from his CRD records.

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

- Claimant's testimony
- Documents and legal authorities provided by Claimant

The Arbitrator provided an explanation of his decision in this Award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic 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 Occurrence Nos. [REDACTED], [REDACTED] and [REDACTED] from registration records maintained by the CRD for Claimant (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact with respect to Occurrence Nos. [REDACTED], [REDACTED] and [REDACTED]

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Claimant's credible testimony, exhibits and legal authorities clearly indicate that all three of the complaints brought by the underlying customers were false and clearly erroneous. The claims arose from investment losses triggered by major market movements, which were within the realm of risk and tolerance for these customers and, specifically, were not caused by the wrongdoing of Claimant. Additionally, Claimant's employer, Respondent Citigroup, found no wrongdoing on Claimant's part and settled the matters to avoid costs and legal fees.

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 named parties, Respondents Citigroup and J.W. Cole Financial, Inc. are each assessed the following:

Respondent Citigroup
Member Surcharge = \$ 150.00

Respondent J.W. Cole Financial, Inc.
Member Surcharge = \$ 150.00

Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision = \$ 200.00

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Arbitrator has assessed the total \$200.00 discovery-related motion fee to Claimant.

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 10, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: December 19, 2017 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the total hearing session fees of \$100.00 solely to Claimant.

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

ARBITRATOR

Gregory D. Hoffmann

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



Gregory D. Hoffmann
Sole Public Arbitrator

23 DEC 2017
Signature Date

12/20/17

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