

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ Eric Litow, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Patrick Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: June 12, 2018.
Claimant signed the Submission Agreement: June 12, 2018.

Statement of Answer filed by Respondent on or about: July 25, 2018.
Respondent signed the Submission Agreement: July 24, 2018.

CASE SUMMARY

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

In the Statement of Answer, Respondent advised that it takes no position on Claimant’s expungement request, and objected to and raised affirmative defenses against Claimant’s request for damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from his CRD records pursuant to:
 - a. FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually

- impossible or clearly erroneous; and
- b. FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
 2. Compensatory damages in the amount of \$1.00 from Respondent; and
 3. Any and all other relief that the Arbitrator deems just and equitable.

Respondent did not include any separate relief requests in the Statement of Answer.

During the hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00 from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

In the Statement of Answer, Respondent advised that the customer in the Underlying Complaint ("Customer") had complained about the illiquidity of his auction rate securities ("ARS") due to the industry-wide failure of auction markets in 2007-2008. Respondent also advised that it had reached an agreement to repurchase the Customer's securities at par value and that Claimant was not asked to contribute to the repurchase amount and did not contribute.

By Order dated October 4, 2018, the previously appointed Arbitrator directed Claimant to file any settlement documents in the Underlying Complaint and notice of the Statement of Claim and expungement hearing to the Customer, among other things.

By letter dated December 13, 2018, Claimant provided a copy of his notice to the Customer regarding the Statement of Claim and expungement hearing. By Affidavit signed December 20, 2018, Claimant advised that the Customer had been served with the Statement of Claim.

By letter dated January 10, 2019, the Customer advised that he supported Claimant's request for expungement and advised that the purpose of his complaint letter was to request that Respondent repurchase the ARS that had become illiquid. The Customer advised that he believed it was Respondent that misrepresented the safety and liquidity of ARS to its clients and advisors and that he was relieved when Respondent was required to repurchase the illiquid securities.

The Arbitrator conducted a recorded telephonic hearing on January 17, 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. The Arbitrator determined that the Customer had been properly served with the Statement of Claim and received due notice of the expungement hearing.

By Order dated January 29, 2019, the Arbitrator requested that the parties confirm that there is no settlement agreement between Respondent and the Customer. By letter dated January 31, Respondent advised that it had reached a settlement with industry regulators

related to all of Respondent's ARS, but that there was no individual settlement agreement between Respondent and the Customer.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator found that there was no settlement agreement between any party and the Customer. The Arbitrator noted that Respondent had reached a settlement with industry regulators related to all of Respondent's ARS. The Arbitrator also noted that Respondent repurchased the Customer's securities at par value and that Claimant was not asked to contribute to the repurchase amount and did not contribute.

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; Customer's letter dated January 10, 2019; Claimant's BrokerCheck® Report; and Claimant's testimony during the expungement hearing.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 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] 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 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:

Claimant made no misrepresentations to the Customer concerning the safety and liquidity of ARS. In Claimant's CRD records, under the Customer's allegations, it states: "CLIENT ALLEGES MISREPRESENTATION CONCERNING THE SAFETY AND LIQUIDITY OF AUCTION RATE SECURITIES." This statement in his CRD records is incorrect. In fact, Claimant made no representation at all. The Customer submitted a letter dated January 10, 2019, supporting expungement and verifying that Claimant made no misrepresentation.

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
--------------------------	------------

**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
------------------	-------------

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 4, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: January 17, 2019	1 session

Total Hearing Session Fees	= \$100.00
----------------------------	------------

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

Michael Harrison

-

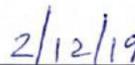
Sole Public Arbitrator

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



Michael Harrison
Sole Public Arbitrator



Signature Date

February 12, 2019

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