

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

SII Investments, Inc.

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D., and Eric Litow, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent SII Investments, Inc. (“Respondent”): Louie Castoria, Esq., Kaufman Dolowich Voluck, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: May 29, 2018.
Claimant signed the Submission Agreement: May 29, 2018.

Statement of Answer filed by Respondent on or about: July 30, 2018.
Respondent signed the Submission Agreement: July 30, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of three customer complaints, occurrence numbers ██████████, ██████████, and ██████████ (“Underlying Complaints”) from his Central Registration Depository (“CRD”) records.

In the Statement of Answer, Respondent advised that while it does not oppose Claimant’s request for expungement, it does oppose Claimant’s request for an award of damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints 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 occurrence number [REDACTED] from his CRD records pursuant to FINRA Rule 2080(b)(1)(B) as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
 3. Expungement of the Underlying Complaints from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
 4. An award of damages in the amount of \$1.00 from Respondents; and
 5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested denial of Claimant's request for an award of damages.

During the hearing, Claimant withdrew his request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 12, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customer in occurrence numbers [REDACTED] and [REDACTED] ("Mr. A"); and the customer in occurrence number [REDACTED] ("Mr. S").

Hereinafter, Mr. A and Mr. S are collectively referred to as the "Customers."

On November 27, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that the Customers were served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on December 3, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement. The Customers did not appear at the hearing. The Arbitrator noted that each of the Customers were served with the Statement of Claim and had notice of the hearing.

On December 4, 2018, Respondent's counsel filed a letter dated November 24, 2018, from Ms. S in response to Claimant's expungement request. The Arbitrator determined that Ms. S' letter was not an opposition to Claimant's expungement request but rather a restatement of the allegations in her underlying complaint.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that the Underlying Complaints were not settled, and therefore there were no settlement agreements to review.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report; Claimant's Exhibit 5 - Order Memoranda relating to Mr. A's accounts; Claimant's Exhibit 6 - Respondent's letter dated April 13, 2015 in response to Ms. S' Complaint dated April 13, 2015; and Claimant's testimony.

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 Complaints, occurrence numbers [REDACTED], [REDACTED] and [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 false.

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

Occurrence Number [REDACTED] (in which Mr. A was the customer)

Mr. A alleged that Claimant failed to execute his trading instructions in a timely manner. The Arbitrator finds this allegation to be false. Claimant's Order Memoranda show that Mr. A's orders were entered at the time they were received.

Occurrence Number [REDACTED] (in which Mr. A was also the customer)

Mr. A alleged that Claimant purchased three stocks for his account without authorization. The Arbitrator finds this allegation to be false. Claimant testified at

the hearing that Mr. A directed Claimant to make the unsolicited purchases for his account and that Respondent provided Mr. A with trade confirmations and statements documenting the purchases, which were also reviewed by the Arbitrator.

Occurrence Number [REDACTED] (in which Ms. S was the customer)

Ms. S alleged that she was not informed of the tax consequences of liquidating a variable annuity. The Arbitrator finds this allegation to be false. Respondent's letter in response to Ms. S' complaint (Claimant's Exhibit 6) as well as Claimant's testimony at the hearing, confirmed that Claimant:

- discussed the tax consequences of the liquidation with Ms. S on multiple occasions;
- advised Ms. S to seek professional tax advice regarding the transaction, which she never did; and
- asked Ms. S to confirm the cost basis of her annuity. The information that Ms. S provided and which Claimant relied upon in advising her, was inaccurate.

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 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: September 14, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: December 3, 2018 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

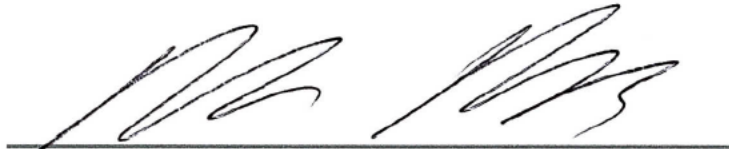
Peter H. Daly

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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



Peter H. Daly
Sole Public Arbitrator



Signature Date

January 29, 2019

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