

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Cetera Investment Services LLC and  
Fifth Third Securities, Inc.

Hearing Site: Milwaukee, Wisconsin

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Erica Harris, Esq. and Docthor Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Cetera Investment Services LLC (“Cetera”): Jeremy Carr, Esq., Cetera Financial Group, El Segundo, California.

Respondent Fifth Third Securities, Inc. (“Fifth Third”) did not appear.

**CASE INFORMATION**

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

Claimant signed the Submission Agreement: December 20, 2018.

Statement of Answer filed on or about: January 14, 2019.

Cetera signed the Submission Agreement: January 17, 2019.

Fifth Third did not file a Statement of Answer or sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Cetera did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers ██████████ and ██████████ \$1.00 in compensatory damages, and any and all other relief that

the Arbitrator deems just and equitable.

In the Statement of Answer, Cetera requested that Claimant's request for \$1.00 in compensatory damages be denied and all forum costs and fees be assessed against Claimant.

On the record at the 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 or about January 30, 2019, Cetera submitted a Joint Stipulation and Proposed Order which provided, among other things, that Claimant would not seek a monetary award greater than \$1.00 against Cetera and Cetera would not oppose Claimant's request for expungement. In an order dated April 8, 2019, the Arbitrator granted the Joint Stipulation and Proposed Order.

On February 8, 2019, FINRA Office of Dispute Resolution ("FINRA ODR") advised the parties that the Director of FINRA ODR determined that Claimant's request for expungement of Occurrence Number [REDACTED] is not eligible for arbitration as it arises from a prior adverse award. Accordingly, pursuant to Rule 13203(a) of the Code of Arbitration Procedure ("the Code"), the forum was denied as to Occurrence Number [REDACTED]

On or about May 29, 2019, Claimant submitted a copy of the letter sent to the customer related to Occurrence Number [REDACTED] ("the Customer"). The letter included a copy of the Statement of Claim, provided notice of the expungement hearing date and time, and advised the Customer of his opportunity to participate in the expungement hearing. On or about June 17, 2019, Claimant submitted an Affidavit of Service.

The Arbitrator conducted a recorded, telephonic hearing on July 1, 2019, so the party could present oral argument and evidence on Claimant's request for expungement.

Neither Cetera nor the Customer participated in the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that there was not a settlement with respect to Occurrence Number [REDACTED]. Therefore, there was no settlement document to review in this matter.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of Occurrence Number [REDACTED]

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Exhibit 9, which includes the Customer's handwritten letter to Claimant, admitting responsibility and apologizing for the trouble he caused Claimant; Exhibit 2,

which is a July 16, 1999, letter from the Claimant to a Senior Compliance Examiner, providing an explanation of the Customer's complaint and their business relationship; Exhibit 3, which is a narrative response from Claimant to a third party financial institution explaining the Customer's complaint, dated June 3, 1999; and Claimant's testimony.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submission, 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 the 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, 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:

Claimant testified about his relationship with the Customer. It was not an investment relationship and was outside the scope of Claimant's employment. Claimant made several loans to a local coffee shop, which he frequented, to assist the proprietor and support the coffee shop business. The entire relationship lasted for less than a year.

Unfortunately, the business failed, despite loans of over \$65,000.00 made to the business. Claimant blamed the Customer, who failed to operate his business in a responsible manner. However, rather than accept the business's failure as his own fault, the Customer blamed Claimant for the failure. When Claimant stopped funding the business, the Customer filed his complaint out of spite. Claimant was under no obligation to continue to fund the coffee shop; he just liked the coffee. Therefore, the fault was inappropriately placed on Claimant.

At the end of the relationship, Claimant obtained an Order of Protection against the Customer because the Customer broke Claimant's car windshield. In fact, the Customer skipped town without fully paying back the loan to Claimant. Claimant is still owed about \$59,000.00. Among other evidence in the record is a

handwritten and signed letter from the Customer, apologizing for the trouble he caused Claimant and for the damages to his car.

The Complaint was fully investigated by Cetera and determined to be without merit.

The complaint and its allegations are clearly false and should be expunged from Claimant's record.

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 ODR 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 a party, Cetera 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 @ \$50.00/session	= \$ 50.00
Pre-hearing conference: April 25, 2019	1 session

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

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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 ODR and are due upon receipt.

**ARBITRATOR**

Michael S. Matek

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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**

***Michael S. Matek***

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Michael S. Matek  
Sole Public Arbitrator

08/08/2019

\_\_\_\_\_  
Signature Date

August 08, 2019

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