

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Dickinson & Co.

Hearing Site: Charlotte, North Carolina

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Owen Harnett, J.D. and Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Broomfield, Colorado.

Respondent Dickinson & Co. did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: January 11, 2017.

██████████ signed the Submission Agreement: January 11, 2017.

Respondent Dickinson & Co. did not file a Statement of Answer and did not sign the Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: defamation and inaccurate reporting on his Central Registration Depository ("CRD") records; tortious interference with prospective economic advantage; and wrongful termination. The causes of action relate to (Occurrence No. ██████████) Respondent's placement of breach of fiduciary duty and theft of company property remarks on Claimant's CRD records and other allegedly false assertions that he had been terminated by Respondent for cause, when in fact he had voluntarily resigned.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: compensatory damages in the amount of \$1.00; an Award granting expungement of Claimant's Form U5 and relevant portions of the Form U4 from Claimant's CRD record on the basis that the statement is defamatory in nature; amendment of the reason for termination entry in Section 3 of Claimant's Form U5 to read "Voluntary;" expungement of the "Yes" answer to Question 7F(1) of Claimant's Form U5; amendment of the "Yes" answers to Questions 14J(1) and

14J(2) of the Claimant's Form U4; and removal of the termination comment in its entirety. Alternatively, if the Arbitrator is unwilling to exercise his discretion in resolving this intra-industry dispute by changing the reason for termination to "Voluntary," that the wording of the disclosure reporting page accompanying Claimant's Form U5 and the allegation portion and termination comment portion of his BrokerCheck® profile be changed to read: "Broker photocopied client information in preparation to move to a new broker-dealer, and returned the account book after completing his duty to his prior clients. Broker was proven innocent of any wrongdoing necessitating discharge. Non-fiduciary, no investment-related violations, and no customer harm."; an award granting expungement of the "Reason for Termination" disclosure on Claimant's BrokerCheck® report on the basis that the disclosure is not permitted pursuant to FINRA Rule 8312(d)(4); and any such relief as the Arbitrator deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

Respondent did not file with FINRA Office of Dispute Resolution a properly-executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

Respondent did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimant, the Arbitrator determined that reasonable unsuccessful attempts were made to serve Respondent with the Statement of Claim and notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

On or about May 4, 2017, the Arbitrator issued the Initial Pre-Hearing Conference Order in which he directed Claimant to address whether Claimant's claim of defamation and request for expungement are barred from arbitration by Rule 13206(a) of the Code. On or about July 14, 2017, Claimant filed his Pre-Hearing Brief in Support of Not Applying FINRA Rule 13206. In his Pre-Hearing Brief, Claimant asserted, among other things, that the courts and FINRA support an interpretation of Rule 13206 which provides great discretion to arbitrators to determine when the event or occurrence gives rise to the claim; in December 2015, the SEC approved a FINRA Rule which became effective on June 6, 2016, requiring members' websites to include a readily apparent reference and hyperlink to the BrokerCheck® database; and that the six-year eligibility period started running on June 6, 2016, when Claimant was required by the FINRA Rule to include a BrokerCheck® hyperlink to his website, thereby creating publicity in the public eye of the defamatory language on his CRD records.

The Arbitrator conducted a recorded telephonic hearing on August 2, 2017, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing and did not contest the request for expungement.

On or about August 10, 2017, Claimant withdrew his relief request for compensatory damages in the amount of \$1.00.

The Arbitrator has 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, and the post-hearing submissions, 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 No. [REDACTED] (Event Date - [REDACTED]) from the registration records maintained by the Central Registration Depository ("CRD"), of Claimant [REDACTED] (CRD # [REDACTED]).

These recommendations include changing any Yes answers to No that relate to Occurrence No. [REDACTED] and that appear on any Forms U4 and U5.

These expungement recommendations are based on the defamatory nature of such statements in that they are false, impeach Claimant in his profession in the securities industry, falsely suggest moral turpitude, and are broadly published and readily available to the public, including Claimant's current and prospective clients and employers.

The registration records are not automatically amended to include the changes indicated above. Claimant must forward a copy of this Award to FINRA's Registration and Disclosure Department for review.

### **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 a party, Respondent 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 with a single arbitrator @ \$50.00/session	= \$	50.00
Pre-hearing conference: May 3, 2017		1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: August 2, 2017		1 session
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Total Hearing Session Fees	= \$	100.00

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

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

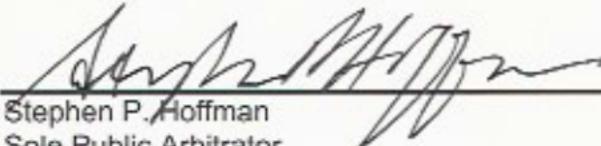
**ARBITRATOR**

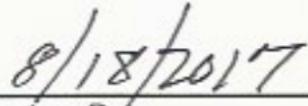
Stephen P. Hoffman

- 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**

  
\_\_\_\_\_  
Stephen P. Hoffman  
Sole Public Arbitrator

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

August 18, 2017

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