

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Denver, Colorado

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Michael Bessette, Esq. HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Kathryn D. Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: February 1, 2019.
Claimant signed the Submission Agreement: February 1, 2019.

Statement of Answer filed by Respondent on or about: April 3, 2019.
Respondent signed the Submission Agreement: April 3, 2019.

CASE SUMMARY

Claimant asserted a claim seeking 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 as to the request for expungement but objected to Claimant’s request for damages and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint 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 the Underlying Complaint from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of \$1.00 from Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not set forth a specific relief request.

At the hearing, Claimant withdrew his request for \$1.00 in damages from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 31, 2019, Claimant provided notice that a copy of the Statement of Claim and notice of the expungement hearing had been served on the customers in the Underlying Complaint ("Customers").

On June 17, 2019, Claimant submitted an Affidavit of Service, advising that the Customers had been served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on August 27, 2019 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, took no position as to the request for expungement. The Arbitrator found that the Customers had notice of the expungement request and hearing but did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator noted that the Underlying Complaint was not settled and therefore there were no documents to review.

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: the sworn testimony of Claimant; Claimant's current BrokerCheck® Report; service of the Statement of Claim on and notice to Customers; Respondent's letter dated June 24, 2010 to the Customers discussing the investigation and denial of the Customers' oral complaint; and Respondent's Statement of Answer which does not contest the request for expungement.

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 Complaint, 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 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:

The Customers' claim of misrepresentation was not supported by the evidence and was clearly erroneous or false. Claimant and the insurance policy issuer met with the Customers several times to explain the policy provisions and investment requirements, the Customers had a 30 day right to reject the policy in question and received quarterly statements from the insurance policy issuer. The Customers' oral claim was duly investigated by Respondent and denied. Customers did not pursue their claim further.

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 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: May 15, 2019 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: August 27, 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

Susan M. Thevenet

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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

Susan M. Thevenet

Susan M. Thevenet
Sole Public Arbitrator

08/29/2019

Signature Date

August 29, 2019

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