

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number ██████████

vs.

Respondent

Citigroup Global Markets, Inc.

Hearing Site: Salt Lake City, Utah

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Citigroup Global Markets, Inc. (“Respondent”): David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 22, 2018.

Claimant signed the Submission Agreement: June 22, 2018.

Statement of Answer filed by Respondent on or about: August 15, 2018.

Respondent signed the Submission Agreement: July 9, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two customer disputes (“Underlying Claims”) from his Central Registration Depository (“CRD”) record: a customer complaint, occurrence number ██████████; and a FINRA Arbitration case, occurrence number ██████████.

In the Statement of Answer, Respondent denied any allegations of wrongdoing and advised that it does not oppose Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD record pursuant to FINRA

- Rule 2080(b)(1)(A), as the claim, allegation, or information are factually impossible or clearly erroneous;
2. Expungement of the Underlying Claims from his CRD record 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 requested:

1. Claimant's request for damages be denied;
2. No forum fees shall be assessed against Respondent; and
3. All other costs and fees associated with this matter be assessed solely against Claimant.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 14, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on the customer in occurrence number [REDACTED] ("Mr. D"); and one of the customers in occurrence number [REDACTED] ("Mrs. S").

On November 28, 2018, Claimant submitted a Death Record for the other customer in occurrence number [REDACTED] ("Mr. S"). On the same date, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Mr. D and Mrs. S were served with the Statement of Claim and that Claimant was unable to serve the Statement of Claim on Mr. S as he is deceased.

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

The Arbitrator conducted a recorded telephonic hearing on December 14, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as noted in the Statement of Answer, did not contest the request for expungement. The Customers did not participate in the expungement hearing. The Arbitrator determined that the Customers had notice of the hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

For occurrence number [REDACTED], the Arbitrator reviewed the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Mr. and Mrs. S not opposing the request for expungement. The Arbitrator also noted that the settlement amount was half of the alleged damages and that Claimant did not contribute to the settlement amount.

The Arbitrator noted that there was no settlement in occurrence number [REDACTED] and therefore there were no settlement documents for him 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: the Statement of Claim; CRD forms; Claimant's response to the allegations in Mr. D's customer complaint; Mr. D's transaction letter; Claimant's response to the allegations in Mr. and Mrs. S's customer complaint; Claimant's BrokerCheck® Report; settlement documents for occurrence number [REDACTED].

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 Claims, occurrence numbers [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. D is the underlying customer)

Concerning Mr. D's complaint, Claimant provided a complete explanation as to the background and history of the annuity at issue. 95% of Mr. D's investments were not managed by Claimant, as they were either self-managed or managed by another broker. Mr. D was an experienced investor and was fully informed (he received monthly statements of his account) that he had selected a fixed monthly

payment for ten years, but later changed his mind and required more money on an accelerated basis.

The Arbitrator was satisfied that the claim was false, as there was no evidence in the record that the annuity was sold by misrepresentation. Accordingly, the Arbitrator determined that Mr. D's conduct was the cause of the dispute in the claim.

Occurrence number [REDACTED] (in which Mr. and Mrs. S are the underlying customers)

Concerning Mr. and Mrs. S' complaint, Claimant provided a complete explanation as to the background and history of the TRAK investment program at issue. Mr. S was an experienced investor and received monthly statements for his account. Mr. S was satisfied with the TRAK program for four years, but in 2008 the stock market collapsed and Mr. S moved 100% of his assets to a fixed income portfolio. He later withdrew the majority of his investment.

The Arbitrator was satisfied that the unsuitability claim was false as there was no evidence in the record that the TRAK program was unsuitable or over-allocated, and it was 20% fixed. Accordingly, the Arbitrator determined that Mr. S' conduct and the 2008 market collapse were the cause of the dispute.

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
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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: October 22, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: December 14, 2018 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

Richard D. Fincher

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



Richard D. Fincher
Sole Public Arbitrator



Signature Date

February 11, 2019

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