

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

FSC Securities Corporation

Hearing Site: San Diego, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent FSC Securities Corporation (“Respondent”): Bradley Fishman, Esq., Advisor Group, Jersey City, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: March 23, 2018.
Claimant signed the Submission Agreement: March 23, 2018.

Statement of Answer filed by Respondent on or about: June 15, 2018.
Respondent signed the Submission Agreement: June 15, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of three customer disputes: two customer complaints, occurrence numbers ██████████ and ██████████; and an NASD Arbitration case, occurrence number ██████████, 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 reserves the right to seek attorneys’ fees and arbitration costs, including FINRA member surcharges and/or fees, against Claimant pursuant to indemnity provisions of Claimant’s agreement with Respondent.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [REDACTED] [REDACTED] and [REDACTED] 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 numbers [REDACTED] [REDACTED] and [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 occurrence numbers [REDACTED] [REDACTED] and [REDACTED] his CRD records 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 Respondent; and
5. 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.

During the expungement 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 October 9, 2018, FINRA Office of Dispute Resolution (“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 (“Code”), the forum was denied as to occurrence number [REDACTED]. The letter further advised that the case would proceed as to occurrence numbers [REDACTED] and [REDACTED] (“Underlying Complaints”). Accordingly, the Arbitrator noted that this award only addresses the request for expungement of the Underlying Complaints.

On December 28, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customers in occurrence number [REDACTED] (“Mr. and Mrs. O”).

On the same day, Claimant submitted an Affidavit of Non-Service signed by Claimant’s counsel advising that he attempted to locate and serve the customer in occurrence number [REDACTED] (“Mr. M”), but was unable to locate Mr. M after conducting reasonable efforts.

Hereinafter, Mr. O, Mrs. O and Mr. M are collectively referred to as the “Customers.”

The Arbitrator conducted a recorded telephonic hearing on January 28, 2019 so the parties could present oral argument and evidence on Claimant’s request for expungement.

On the same day, Respondent advised that it would not be appearing at the expungement hearing and deferred to the Arbitrator on all decisions. As stated in the Statement of Answer, Respondent did not oppose the request for expungement. The Customers also did not appear at the hearing. The Arbitrator noted that Mr and Mrs. O were served with the Statement of Claim and had notice of the hearing. The Arbitrator reviewed Claimant's Affidavit of Non-Service on Mr. M and found that Claimant's efforts to locate Mr. M were reasonable.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that the Underlying Complaints were denied (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 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] and [REDACTED], from registration records maintained by 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 findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

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

Claimant was never the broker-of-record for Mr. M, nor did Claimant ever meet Mr. M, give him any advice, or conduct any transactions on his behalf.

Mr. M's complaint was investigated and denied as to having no merit. Therefore, Claimant was not involved with the alleged investment-related sales practice violation.

Occurrence Number [REDACTED] (in which Mr. and Mrs. O were the customers)

Claimant was only the broker-of-record for a short period of time after inheriting an account where Mr. and Mrs. O were already invested, but Claimant never made any transactions on behalf of Mr. and Mrs. O.

Mr. and Mrs. O's complaint was investigated and denied as to having no merit. Therefore, Claimant was not involved with the alleged investment-related sales practice violation.

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, 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: July 13, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
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Hearing Date: January 28, 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

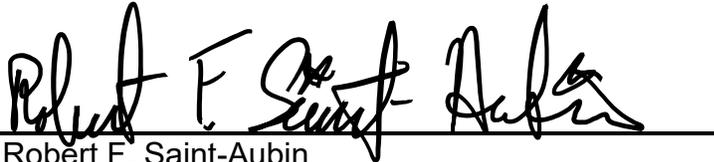
Robert F. Saint-Aubin

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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



Robert F. Saint-Aubin
Sole Public Arbitrator



Signature Date

February 19, 2019

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