

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number ██████████

vs.

Respondent

Ameriprise Financial Services, Inc.

Hearing Site: Detroit, Michigan

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ Michael Bessette, Esq., HLBS Law,  
Westminster, Colorado.

For Respondent Ameriprise Financial Services, Inc.: Howard M. Klausmeier, Esq.,  
Ameriprise Financial Services, Inc., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: April 13, 2018.

██████████ signed the Submission Agreement: April 13, 2018.

Statement of Answer filed by Respondent on or about: August 30, 2018.

Ameriprise Financial Services, Inc. signed the Submission Agreement: August 30, 2018.

**CASE SUMMARY**

Claimant asserted the cause of action of inaccurate reporting on her Central Registration Depository ("CRD") records. The cause of action relates to a previously settled customer arbitration (Occurrence No. ██████████ involving the purchase of mutual funds, unit investment trusts, and real estate investment trusts (REITs) in the customer's account.

In the Statement of Answer, Respondent stated that it did not object and, in fact, concurred with Claimant's request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence No. ██████████ from her CRD records; compensatory damages in the amount of \$1.00; and any other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer Respondent requested: expungement of the subject customer complaint from Claimant's CRD records; denial of all requested damages against Respondent; and an assessment of all costs and fees against Claimant that have been or will be incurred by Respondent, including but not limited to the member surcharges and hearing fees.

At the hearing, Claimant withdrew her 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 December 7, 2018, Claimant filed with FINRA Office of Dispute Resolution an Affidavit and proof of service of the Statement of Claim and notice of the date and time of the expungement hearing upon the underlying customer. The underlying customer did not submit a written response thereto.

The Arbitrator conducted a recorded telephonic hearing on January 8, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing and did not contest Claimant's request for expungement. The underlying customer did not participate in the expungement hearing and did not contest the request for expungement. The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents between the underlying customer and Respondent, 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 the customer not opposing the request for expungement. The Arbitrator noted that the case settled for one quarter of what was requested, it was settled in order to avoid the greater cost of litigation, and Claimant paid a small fraction of the settlement amount.

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: Claimant's exhibits 2 (Brokercheck), 3 (Respondents Answer and Affirmative Defenses) and 4 (Settlement Agreement); Claimant's uncontradicted testimony about numerous meetings with the customer and his wife; and documentation provided to and signed by the customer as trades were made.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the 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] from registration records maintained by the CRD; for Claimant (CRD#

[REDACTED], with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 (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 findings based on the following reasons:

Claimant and Respondent denied the underlying claim, without admitting liability, to avoid the cost of defense. The uncontradicted testimony at the expungement hearing was that the investments recommended by Claimant were suitable and were clearly explained to and accepted by the customer.

The underlying dispute concerned transfers from the customer's annuities, which in reduced annual payments. The uncontradicted testimony was that the customer wanted investment change because the annuities were earning below market and he could afford the reduction in annual payments because of other investments. The transfer from the annuities were carefully made so as to avoid penalties.

The customer filed his claim almost two years after the Claimant was no longer his financial advisor. There is no reasonable basis to conclude that the recommended investments were not suitable at the time they were made.

### **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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**ARBITRATOR**

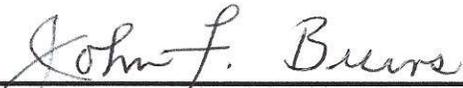
John F. Burns

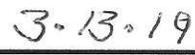
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Sole Public Arbitrator

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**

  
\_\_\_\_\_  
John F. Burns  
Sole Public Arbitrator

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

3/13/2019

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