

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

Citigroup Global Markets, Inc.
Walnut Street Securities, Inc.
National Planning Corporation

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████: Dochter Kennedy, Esq., and Eric Litow, Esq., AdvisorLaw, LLC, Westminster, Colorado.

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

For Respondent National Planning Corporation: Scott Forbush, National Planning Corporation, El Segundo, California.

For Respondent Walnut Street Securities, Inc.: Christina Vourakis, Esq., Cetera Financial Group, El Segundo, California.

CASE INFORMATION

Statement of Claim filed on or about: March 21, 2018.

Amended Statement of Claim filed on or about: March 23, 2018.

██████████ the Submission Agreement: March 21, 2018.

Statement of Answer filed by Respondent Citigroup Global Markets, Inc. on or about: June 1, 2018.

Citigroup Global Markets, Inc. signed the Submission Agreement: June 7, 2018.

Statement of Answer filed by Respondent Walnut Street Securities, Inc. on or about: May 14, 2018.

Walnut Street Securities, Inc. signed the Submission Agreement: April 5, 2018.

Statement of Answer filed by Respondent National Planning Corporation on or about:
April 19, 2018.

National Planning Corporation signed the Submission Agreement: April 19, 2018.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following cause of action: expungement.

In their Statement of Answers, Respondents Citigroup Global Markets, Inc., National Planning Corporation, and Walnut Securities, Inc., did not oppose Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED] from his CRD records, an award of damages in the amount of \$1.00 from the Respondents, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent Walnut Street Securities, Inc. requested a statement from the Chairperson on the issue of whether to order recommending that the customer complaint be expunged from Claimant's CRD Records in the form required by FINRA Rule 2080; denial of Claimant's request for \$1.00 in compensatory damages; and an order that all forum cost and fees are assessed against the Claimant.

In the Statement of Answer, Respondent Citigroup Global Markets, Inc. did not oppose the requested expungement relief, objected to Claimant's request for \$1.00 in compensatory damages, and fees associated with this matter be assessed solely against Claimant.

In the Statement of Answer, Respondent National Planning Corporation takes no position on the requested relief.

At the close of the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

Pursuant to their Answer, Respondent Walnut Street Securities, Inc. and National Planning Corporation stated they would not appear at the evidentiary hearing.

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers related to occurrence numbers [REDACTED], [REDACTED] and [REDACTED] of the

expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The Arbitrator conducted a recorded telephonic hearing on November 5, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

The customers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the unexecuted settlement documents for occurrence number [REDACTED], considered the amount of payments made to the customer, 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 also noted that [REDACTED] did contribute to the settlement amount. However, the amount was a make whole amount for what was regarded as a trading error. In granting the expungement request, the Arbitrator relied on Claimant's testimony.

The Arbitrator noted that [REDACTED] 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 Statement of Claim, Respondents' Statement of Answers, and evidence and testimony presented at the expungement hearing by Claimant.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

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 number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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 claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

The customer alleged that the Financial Consultant promised to properly diversify his assets and professionally handle his account, and that the Financial Consultant wiped out his accounts by conducting unsuitable excessive speculative trading on margin beginning 1/1/2000. As to Claimant [REDACTED], the evidence indicates that those allegations are clearly erroneous and/or false.

The individual who filed the complaint was a customer of Claimant and his partner, from January 2000 through early 2001, when the Claimant left the firm. The credible testimony of Claimant, as well as Claimant's contemporaneous notes (Exh. 4) and the transaction history for the account (Exh. 5) indicate that the customer was a sophisticated trader who was interested in aggressive investing. The customer transferred a number of dotcom positions into his account from an existing account and initiated many of the transactions in the account himself by using his online access. Claimant testified credibly that none of the accounts were discretionary, that Claimant did not recommend any of the transactions in the customer's account and that his losses were primarily due to the "dotcom bubble" and the customer's aggressive use of margin.

Although the customer commenced arbitration against the firm two years later (No. [REDACTED]), which resulted in an award of \$80,000 of the customer's requested \$1,200,000 in damages, Claimant was not named in that arbitration and there is no indication that Claimant paid any part of the award.

Based on the foregoing, the allegations are clearly erroneous and/or false.

2. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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 claim, allegation, or information is false.

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

The customer alleged that she “believes that [Claimant] [REDACTED] mishandled her accounts and that there were unauthorized trades done in her account” and that “they were unsuitable trades misrepresenting the true nature of the investment risks with respect to her personal situation.” The evidence indicates that these allegations were false.

The customer was a 60 year old executive assistant in 2001 when she became a customer of Claimant. The credible testimony of Claimant, as well as the transaction history and contemporaneous notes (Exhibit 6) indicate the following. The customer had an existing account at the brokerage firm which had some positions the Claimant believed were too aggressive for her profile and recommended changes to reduce her risk. The changes that were implemented were exchanges of mutual funds within fund families that resulted in no upfront charges to the customer and no compensation to Claimant. There were no discretionary accounts. Claimant testified credibly that all transactions were authorized and this testimony was supported by the contact log, which indicated more than 40 contacts during the period in question.

The firm reviewed the complaint and found that “all transactions were expressly authorized by the client and all transactions were determined to be suitable, consistent with the client’s goals and risk tolerance. In addition, all transactions were to cover client liquidity needs and/or to reduce portfolio risk.” There was no further action by the customer.

Based on the foregoing, the allegations are false.

3. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository (“CRD”), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [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 finding of fact:

The claim, allegation, or information is false.

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

The customer alleged that “Representative [REDACTED] failed to follow instructions to liquidate account in a timely manner.” The evidence indicates that this allegation is false.

The credible testimony of Claimant [REDACTED] as well as the contemporaneous email of the customer (Exhibit 7) indicate that Claimant did not fail to follow instructions. Rather, the Claimant was travelling and could not be reached, so did not learn of the instructions when they were given. The office protocols did not allow liquidations above a certain amount without Claimant’s approval and so the liquidation did not occur on the date requested. When Claimant learned of the request, he processed the request as soon as possible. Through settlement, the customer was made whole for the difference in liquidation value of the accounts between the date of the request and the date the liquidation was accomplished (Exhibit 8) and the customer remained a client of Claimant for several years thereafter.

Based on the foregoing, the allegations are false.

FEES

Pursuant to the Code of Arbitration Procedure, 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Citigroup Global Markets, Inc. Walnut Street Securities, Inc., and National Planning Corporation are each assessed the following:

Member Surcharge	= \$ 450.00
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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
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Pre-hearing conference:	July 23, 2018	1 session	
One (1) hearing session on expungement request @		\$50.00/session	= \$50.00
Hearing Date:	November 5, 2018	1 session	
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Total Hearing Session Fees			= \$100.00

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

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

ARBITRATOR

Sandra J. Mullings

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature



Sandra J. Mullings
Sole Public Arbitrator



Signature Date

December 12, 2018

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