

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

J.P. Morgan Securities, LLC

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

For Respondent J.P. Morgan Securities, LLC (“Respondent” or “J.P. Morgan”): Vanessa C. Krumbein, Esq., Ogletree, Deakins, Nash, Smoak & Stewart, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: May 3, 2018.

Claimant signed the Submission Agreement: May 3, 2018.

Statement of Answer filed by Respondent on or about: June 21, 2018.

Respondent signed the Submission Agreement: June 20, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers ██████████ and ██████████ (“Underlying Complaints”) from his Central Registration Depository (“CRD”) record.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent also advised that it takes no position as to Claimant’s request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints from his CRD record 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 Complaints 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 the Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested Claimant's request for an award of damages be summarily denied.

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 October 26, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customer in occurrence [REDACTED] ("Mr. D"); and the customer in occurrence number [REDACTED] ("Ms. Z").

Hereinafter, Mr. D and Ms. Z are collectively referred to as "Customers."

By Order dated October 26, 2018, the Arbitrator requested that Claimant supply settlement documents relating to occurrence number [REDACTED]. On October 30, 2018, Claimant filed a response to the Arbitrator's order indicating that Claimant is not in possession of a settlement agreement with respect to occurrence number 1865738. On the same date, Claimant submitted a further response representing that Claimant's counsel had conferred with Respondent's counsel, who indicated that they were also not in possession of a settlement agreement relating to occurrence number [REDACTED]. Claimant's counsel further advised that the parties believe that the settlement amount in CRD reflects the return of client fees associated with Ms. Z's account and it is likely that there was no formal settlement agreement.

On November 6, 2018, 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 November 7, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent appeared at the expungement hearing and did not object to Claimant's expungement request. Neither Mr. D nor Ms. Z appeared at the expungement hearing. The Arbitrator found that the Customers received notice of the expungement hearing.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator found that there was no settlement in occurrence number [REDACTED] as Mr. D withdrew his complaint and therefore there were no settlement documents to review.

The Arbitrator found that with respect to occurrence number [REDACTED], the amount reflected on CRD as a settlement amount related to a return of fees only, that there are no settlement documents or conditions of settlement and that Claimant did not participate in any settlement with Ms. Z.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim and exhibits; Statement of Answer; BrokerCheck® Report; notices of the hearing sent to the Customers; and testimony from Claimant and Respondent.

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 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:

Both customer complaints were "automatic" reactions to a declining market, which corrected itself. This was in spite of accurate assessments of risk tolerance and balanced investment portfolios, as well as full disclosure of markets and risks. In occurrence number [REDACTED], Mr. D acknowledged his mistake and remained with the broker and J.P. Morgan, with no settlement or actual damages

claimed. In occurrence number [REDACTED], Ms. Z left the broker-dealer without further claims and was given a refund of fees, to which the broker did not contribute. J.P. Morgan's reporting to CRD was required but does not represent an accurate representation of the broker.

2. Any and all requests 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: August 21, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 7, 2018	1 session

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Total Hearing Session Fees	= \$100.00
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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**

Kirtley M. Thiesmeyer

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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**



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Kirtley M. Thiesmeyer  
Sole Public Arbitrator

27 December 2018

Signature Date

December 28, 2018

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