

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

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Chicago, Illinois

Merrill Lynch, Pierce, Fenner & Smith Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Dohtor Kennedy, Esq. and Harris Freedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. ("Respondent"): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: February 26, 2018.

Claimant signed the Submission Agreement: February 26, 2018.

Statement of Answer filed on or about: April 19, 2018.

Respondent signed the Submission Agreement: April 19, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint, Occurrence Number [REDACTED], from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent took no position on Claimant's request for expungement and asserted various affirmative and other defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement, an award of compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

On the record at the hearing, Claimant withdrew his 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.

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. Respondent participated in the expungement hearing but did not take a position on Claimant's request for expungement. The customers involved in Occurrence Number [REDACTED] did not participate in the expungement hearing.

### **AWARD**

After considering the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submission, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of Occurrence Number [REDACTED] from his CRD records is denied.
2. Any and all claims for relief not specifically addressed herein are denied.

### **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 firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$150.00
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#### **Postponement Fees**

Postponement granted during these proceedings for which fees were assessed or waived:

<u>November 29, 2018, postponement requested by Claimant</u>	<u>=\$ 50.00</u>
Total Postponement Fees	WAIVED

**Last Minute Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

Postponement of the hearing on November 29, 2018, was requested by Claimant on November 28, 2018	= \$600.00
<u>Total Last Minute Cancellation Fees</u>	<u>= \$600.00</u>

The Panel has assessed \$600.00 of the last minute cancellation fees to Claimant.

**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: June 18, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: January 28, 2019	1 session

<u>Total Hearing Session Fees</u>	<u>= \$100.00</u>
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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.

