

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: New Orleans, Louisiana

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Erica Harris, Esq. and Docthor Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

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

CASE INFORMATION

Statement of Claim filed on or about: July 24, 2018.

Claimant signed the Submission Agreement: July 24, 2018.

Statement of Answer filed by Respondent on or about: September 13, 2018.

Respondent signed the Submission Agreement: September 13, 2018.

CASE SUMMARY

Claimant requested expungement of reference to two customer complaints ("Underlying Complaints"), occurrence numbers [REDACTED] and [REDACTED] from his Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondent takes no position as to the requests for expungement, and objected to and raised affirmative defenses against Claimant's request for damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints from his CRD record pursuant to:

- a. FINRA Rule 2080(b)(1)(A) as the claim, allegation, or information is factually impossible or clearly erroneous; and
- b. FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
2. Damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

Respondent did not include any relief requests in the Statement of Answer.

During the expungement hearing, Claimant withdrew his request for damages in the amount of \$1.00 from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 13, 2018, the Arbitrator and parties held an Initial Pre-hearing Conference. By Order that same day, among other things, the Arbitrator directed Claimant to file notice as to whether the customers from the Underlying Complaints ("Customers") or their counsel will participate in the expungement hearing by December 1.

On November 15, 2018, Claimant provided a copy of his notice to the Customers regarding the Statement of Claim and notice of the expungement hearing. On November 28, Claimant provided an Affidavit of Service advising that the Customers had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on January 8, 2019 so the parties could present oral argument and evidence on Claimant's requests for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Customers did not participate in the expungement hearing. The Arbitrator determined that the Customers had been properly served with the Statement of Claim and received due notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator found that the Underlying Complaints were denied (and not settled) and therefore there were no settlement documents for the Arbitrator 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: exhibits 1-8 to the Statement of Claim and Claimant's testimony during the expungement hearing.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 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 for the Underlying Complaints:

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:

Occurrence Number [REDACTED]

The customer alleged that Claimant made "unsuitable investment recommendations and misrepresentation regarding fees." The customer had years of investment experience and high liquidity needs for her living expenses. She had worked with Claimant since 1996. Claimant presented several options for an annuity and explained the risks and advantages, after which, in 2007, the customer chose a variable annuity in exchange for a fixed annuity, with which she was not satisfied. The customer executed documents that informed her of the costs and the consequences of her purchase (exhibits 3, 4, 5 and 6). Claimant made suitable investment recommendations to meet the customer's financial goals. Respondent denied the complaint after an investigation and the customer did not pursue it in arbitration or court.

Occurrence Number [REDACTED]

The customer alleged that Claimant made "unsuitable investment recommendations." The customer was an experienced investor, and Claimant advised her of the risks. She was given a prospectus, executed a contract and purchased an annuity in 2003 and held the annuity until 2011. Claimant made suitable investment recommendations on this and other financial matters, about which the customer did not complain (exhibits 7 and 8). Respondent denied the

complaint after an investigation and the customer did not pursue it in arbitration or court.

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(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: November 13, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: January 8, 2019	1 session

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


Barbara L. Edin

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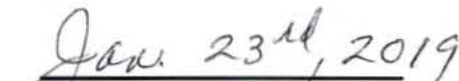
Sole Public Arbitrator

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



Barbara L. Edin
Sole Public Arbitrator



Signature Date

January 23, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)