

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

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In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number: [REDACTED]

vs.

Respondent

Broker Dealer Financial Services Corp.

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondent Broker Dealer Financial Services Corp. ("Respondent"): Michael T. Sherzan, President, Broker Dealer Financial Services Corp., West Des Moines, Iowa.

**CASE INFORMATION**

Statement of Claim filed on or about: October 18, 2018.

Claimant signed the Submission Agreement: October 18, 2018.

Statement of Answer filed by Respondent on or about: December 17, 2018

Respondent signed the Submission Agreement: November 21, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a termination disclosure from his Form U5 filed by Respondent on Claimant's Central Registration Depository ("CRD") records. Claimant alleged that the termination disclosure at issue is defamatory in nature.

In the Statement of Answer, Respondent upheld the language of the termination disclosure in Claimant's Form U5 and denied Claimant's allegation that the termination disclosure was defamatory in nature, misleading, inaccurate, or erroneous.

In the Amended Statement of Claim, Claimant modified the factual allegations and removed a relief request.

In the Amended Statement of Answer, Respondent advised that it did not object to Claimant's request for expungement as stated in the Amended Statement of Claim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Form U5 amendments, and those relevant portions of the Form U4, from Claimant's CRD record on the basis that the statements are defamatory in nature, misleading, inaccurate, and/or erroneous, including: an order to amend the Reason for Termination entry in Section 3 of the Form U5 to read "Voluntary," expungement of the Reason for Termination explanation, and deletion of any and all accompanying Internal Review and Termination Disclosure Reporting Pages in their entirety;
2. Compensatory damages in an amount of \$1.00 from Respondent; and
3. Any other relief as the Panel deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's claim and request for expungement be denied.

In the Amended Statement of Claim, Claimant removed the request for any other relief as the Panel deemed just and equitable.

In the Amended Statement of Answer, Respondent did not set forth a specific relief request.

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

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On December 17, 2018, Respondent filed a Motion to Dismiss ("Motion to Dismiss") pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On January 14, 2019, Claimant filed an opposition to the Motion to Dismiss. By Amended Order dated March 14, 2019, the Arbitrator advised that the parties stipulated to delay the Arbitrator's ruling on the Motion to Dismiss until the evidentiary hearing.

On April 16, 2019, Claimant filed the parties' agreement to amend the pleadings to include an Amended Statement of Claim and an Amended Statement of Answer.

On April 29, 2019, the Arbitrator issued an Order allowing Claimant to file an Amended Statement of Claim and Respondent to file an Amended Statement of Answer. On April 29, 2019, Claimant filed the Amended Statement of Claim and it became part of the record.

On May 9, 2019, Respondent filed the Amended Statement of Answer in response to Claimant's Amended Statement of Claim. In the Amended Statement of Answer, Respondent withdrew its Motion to Dismiss.

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 the Reason for Termination and Termination Explanation in Section 3 of Claimant [REDACTED] (CRD# [REDACTED] Form U5 filed by Broker Dealer Financial Services Corp. (CRD # [REDACTED] on April 6, 2005 and maintained by CRD. The Reason for Termination shall be changed to "Voluntary" and the Termination Explanation should appear blank.

These recommendations shall apply to all subsequent disclosures regarding this event.

The Arbitrator recommends expungement based on the defamatory nature of the information. The registration records are not automatically amended to include the changes indicated above. [REDACTED] must forward a copy of this Award to FINRA's Registration and Disclosure Department for review.

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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#### **Postponement Fees**

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

April 16, 2019, postponement by Claimant and Respondent = \$50.00

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Total Postponements Fees = \$50.00

The Arbitrator has assessed \$25.00 of the postponement fees to Claimant.  
The Arbitrator has assessed \$25.00 of the postponement fees to Respondent.

**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:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session = \$100.00  
Pre-hearing conferences: February 11, 2019 1 session  
March 14, 2019 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00  
Hearing Date: May 16, 2019 1 session

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Total Hearing Session Fees = \$150.00

The Arbitrator has assessed \$125.00 of the hearing session fees to Claimant.  
The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Michael M. Hachigian

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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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Michael M. Hachigian  
Sole Public Arbitrator

June 6, 2019

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

June 7, 2019

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