

**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

Citigroup Global Markets, Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

For Respondent Citigroup Global Markets, Inc. ("Respondent"): Adam Kauff, Esq., Kauff Laton Miller LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: January 10, 2019.  
Amended Statement of Claim filed on or about: March 7, 2019.  
Claimant signed the Submission Agreement: January 9, 2019.

Statement of Answer filed on or about: March 1, 2019.  
Respondent did not sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim and Amended Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent denied any wrongdoing but stated that it did not oppose Claimant's request for expungement.

**RELIEF REQUESTED**

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

In the Statement of Answer Respondent requested that the Arbitrator deny Claimant's request for damages.

On record at 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.

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

On or about May 17, 2019, in compliance with the Initial Pre-hearing Conference Order, Claimant filed a copy of the notice sent to the customer related to Occurrence Number [REDACTED] ("the Customer"), providing the Customer with a copy of the Amended Statement of Claim, notice of the expungement hearing date and time, and notice of the option to participate in the expungement hearing. On or about May 24, 2019, Claimant filed an Affidavit of Service to the Customer.

On or about August 5, 2019, Claimant filed a copy of the secondary notice sent to the Customer, providing the customer with notice of the rescheduled expungement hearing date and time, and the dial-in information. On or about August 12, 2019, Claimant filed an Affidavit of Service of the August 5, 2019 notice to the Customer.

The Arbitrator conducted a recorded, telephonic hearing on September 4, 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 contest the request for expungement. The Customer did not participate in the expungement hearing or submit any documents or evidentiary material.

In a document submitted by Claimant on or about May 17, 2019, Claimant's counsel represented that Claimant was not in possession of the settlement agreement related to Occurrence Number [REDACTED]. In an order dated June 18, 2019, the Arbitrator ordered counsel for Respondent to file an affidavit as to Respondent's inability to locate the settlement documents and as to any knowledge of the settlements' terms and conditions.

On or about June 19, 2019, Respondent filed an affidavit stating that, after a diligent good faith search, settlement documents could not be located for Occurrence Number [REDACTED].

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that neither Claimant nor Respondent were in possession of the settlement agreement, therefore it was not reviewed. The Arbitrator considered the amount of payments made to any party and other relevant terms and conditions of the settlement as provided in the BrokerCheck® Report.

Claimant testified that he was not asked and did not contribute to the settlement. Based on the evidence and testimony presented, the Arbitrator determined that Claimant did not contribute to the settlement amount.

The Arbitrator noted that Claimant 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: testimony of Claimant, BrokerCheck® Report for Claimant, Exhibit 1 (customer account statements), and all pleadings filed by the parties.

### **AWARD**

After considering the pleadings, the testimony and 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. The Arbitrator recommends the expungement of all references to Occurrence Number [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, 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 preponderance of the evidence presented shows that the Customer was referred to Claimant, a seasoned financial advisor and 25-year veteran, in 1999. At that time, the Customer was a senior vice president and bond portfolio manager for a regional bank. The Customer came requesting a growth and income portfolio, with an emphasis on growth. The initial meetings helped Claimant determine the Customer's time frame, risk tolerance and investment objectives. The Customer met Claimant and concluded she was a sophisticated investor with more than 20 years of investment experience and with an executive position directly in the financial industry. After meeting with her, the Customer

completed a new account form and general background questionnaire. With this information, Claimant discussed the terms and conditions, the risks and fees of the guided portfolio management (GPM) plan. The Customer kept her bond portfolio, her checking, savings and CDs, while providing Claimant 35% of her other investable assets. There was no doubt the Customer understood this strategy as she asked questions from the beginning and throughout their relationship evidencing her knowledge in the industry and understanding of the market. In accepting Claimant's recommendation, the Customer moved into a more conservative portfolio management system leaving her aggressive stocks, random portfolio and "high flyer" penny stocks. The Customer appeared satisfied throughout their relationship. In the beginning, her account performed well and she was satisfied. At no time, did the Customer seek to change her asset allocations, question any trade made during the entire investment period, or ever complain about the investments in this portfolio.

Unfortunately, the Customer entered the market at its high in 1999 and exited the market at its bottom in 2005. At no time, did Claimant recommend closing her account. The Customer did not account for her own withdrawals in calculating her losses. Claimants' other clients who invested money in similar portfolios at the same time as the Customer, but who did not sell, have seen not only recovery, but very high performance. Claimant never promised the Customer specific returns. The documents she received never promised specific returns. The investments recommended were suitable based on her individual investment profile. The Customer's version of the facts is false and clearly erroneous.

The Customer did not appear nor provide any evidentiary material in support of the events alleged in the claim filed on October 16, 2007, for events alleging she was allegedly "deceived" with respect to potential returns on investments and that the investments were unsuitable in the period 07/1999-08/2005. The Arbitrator finds Claimant's version of the events supported by the evidence, nothing supports deception of any kind, and therefore, the Customer's allegations are factually impossible.

Furthermore, there was no misrepresentation by Claimant. The Customer has provided no specific basis as to how she was "deceived." Her allegation consists of a single sentence. The Customer has not provided evidence to support any misrepresentation claim. There are no guarantees for returns in the market. She invested in a standard portfolio. She received trade confirmations, monthly statements and quarterly statements. All of Claimant's investments were suitable and all of the trades were in conformance and compliance with the Respondent's research, recommendations and approvals. None of the Customer's allegations have any merit. For these reasons, expungement of Claimant's record is appropriate.

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

*\*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

**Postponement Fees**

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

June 18, 2019, postponement by Claimant = \$ 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.

**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:

June 18, 2019, postponement requested Claimant WAIVED

**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 @ \$50.00/session = \$ 50.00  
Pre-hearing conference: May 1, 2019 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: September 4, 2019 1 session

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Total Hearing Session Fees = \$ 100.00

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**

Lynn Hirschfeld Brahin

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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**

***Lynn Hirschfeld Brahin***

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Lynn Hirschfeld Brahin  
Sole Public Arbitrator

09/09/2019

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

September 09, 2019

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