

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Independent Financial Group, LLC.
Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

For Respondent Independent Financial Group, LLC. (“Independent Financial”): Sarah J. Kreisman, Chief Legal Counsel and VP, Compliance, Independent Financial Group, LLC, San Diego, California.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Merrill Lynch”): Joel M. Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

Hereinafter, Independent Financial and Merrill Lynch are collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: July 26, 2018.
Claimant signed the Submission Agreement: July 26, 2018.

Statement of Answer filed by Merrill Lynch on or about: September 17, 2018.
Merrill Lynch signed the Submission Agreement: September 17, 2018.

Statement of Answer filed by Independent Financial on or about: August 31, 2018.
Independent Financial did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two customer disputes (“Underlying Claims”): an NASD Arbitration, occurrence number [REDACTED], and a customer complaint, occurrence number [REDACTED], from his Central Registration Depository (“CRD”) record.

In its Statement of Answer, Merrill Lynch advised that it takes no position as to Claimant’s requests for expungement, but specifically objected to Claimant’s request for damages. Merrill Lynch also asserted various affirmative defenses.

In its Statement of Answer, Independent Financial advised that it does not contest the present action and will not oppose Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD records 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 Claims from his CRD records 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 Respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Merrill Lynch did not set forth a specific relief request.

In the Statement of Answer, Independent Financial requested:

1. Any claim for damages against Independent Financial (though nominal) be denied; and
2. In the event that there are forum fees associated with this action, that they be assessed against Claimant.

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.

Independent Financial 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 December 7, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on: counsel for the customer in occurrence number [REDACTED] (“Ms. K”); and the customer in occurrence number [REDACTED] (“Mrs. M”) and her counsel.

The Arbitrator noted that while Mrs. M made the underlying complaint in occurrence number [REDACTED], her husband ("Mr. M") was also on some of her accounts with Independent Financial.

On the same date, Claimant submitted a copy of an obituary and death record for Ms. K.

On December 10, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel, advising that Mrs. M, her counsel and counsel for Ms. K were served with a copy of the Statement of Claim. Claimant's counsel also noted that they were unable to serve Ms. K, as a review of public information indicated that Ms. K is deceased.

The Arbitrator conducted a recorded telephonic hearing on January 9, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement. Merrill Lynch participated in the expungement hearing and, as stated in its Statement of Answer, did not contest the request for expungement.

Independent Financial did not participate in the expungement hearing and, as stated in its Statement of Answer, did not contest the request for expungement.

Mrs. M also did not participate in the expungement hearing. The Arbitrator found that Mrs. M had notice of the expungement request and hearing but were either unable to participate or chose not to participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator reviewed the settlement documents for occurrence number [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that Independent Financial stated in its Statement of Answer that the settlement of this occurrence was the result of a business decision, in order to avoid the costs and uncertainty of litigation. The Arbitrator noted that the settlement was not conditioned on Mrs. M not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of occurrence number [REDACTED] in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Statement of Claim;
- Independent Financial's Statement of Answer;
- Claimant's BrokerCheck® Report dated July 26, 2018;
- Claimant's CRD Snapshot Report dated July 11, 2018;
- Mrs. M's complaint letter dated April 28, 2017;
- Independent Financial's Response to Mrs. M's complaint letter dated June 1, 2017;
- Settlement Agreement and Release between Mrs. M and Independent Financial executed on May 18, 2018;

- Independent Financial Group Risk Tolerance Questionnaire Investment Advisory Services for Mr. and Mrs. M dated March 5, 2015;
- Business Development Company Suitability Questionnaires and Real Estate Investment Trust (REIT) Suitability Questionnaires for Mrs. M, dated March 11, 2015;
- Account Application and Agreement with Claimant for Mr. and Mrs. M dated March 5, 2015;
- Subscription Agreement for FS Investment Corporation III for Mrs. M dated March 11, 2015;
- American Realty Capital Hospitality Trust Subscription Agreement for Mrs. M dated March 11, 2015;
- Business Development Corporation of America Subscription Agreement for Mrs. M dated March 11, 2015;
- Private Investment Forms for FSEP, FSIC III, Business Development Corp. of America, ARC Realty Finance Trust, Inc., and American Realty Capital Hospitality Trust, signed by Mrs. M on March 11, 2015; and
- FS Energy and Power Fund Agreement signed by Mrs. M on May 26, 2015.

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. Claimant's request for expungement of occurrence number [REDACTED] from his CRD records is denied.
2. 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.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Mr. and Mrs. M were experienced investors with 30 years of investment experience. They apparently had previously invested in REITS and mutual funds for many years. Furthermore, the investments recommended by Claimant were designed to meet their stated income needs without invading principal every month, while at the same time providing some liquidity if the need arose. The products at issue were therefore found to match their investment requirements.

Prior to investing, Mr. and Mrs. M asked their son ("Mr. AM") to review the portfolio recommended by Claimant. Mr. AM has a Masters Degree in Business from the Wharton School, and was a portfolio manager and Senior Vice President at a brokerage firm with over 3 billion dollars under management. Mr. AM is a sophisticated and knowledgeable professional investor. Mr. AM called Claimant and reviewed each of the proposed investments in detail with him. Mr. AM understood the risks and benefits of each of the recommended investments and apparently discussed all of the details with his parents, who typically sought his advice regarding their investments. After evaluating Mr. AM's input, Mr. and Mrs. M decided to make the investments recommended by Claimant.

Claimant's investment recommendations appeared to be consistent with Mr. and Mrs. M's risk tolerance and investment experience, and Claimant appeared to perform his duties in a responsible and appropriate manner. Consequently, as indicated above, Claimant's request for expungement for occurrence number [REDACTED] is granted.

3. 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, Merrill Lynch is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, Independent Financial is assessed the following:

Member Surcharge = \$ 150.00

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 19, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: January 9, 2019 1 session

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

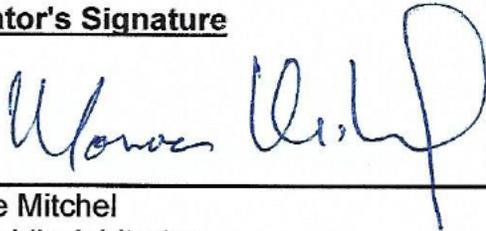
Monroe Mitchel

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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



Monroe Mitchel
Sole Public Arbitrator

2/6/19

Signature Date

February 6, 2019

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