

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Quick & Reilly, Inc.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Christopher Cummins, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Quick & Reilly, Inc.: Sarah K. Yates, Esq., Bressler, Amery & Ross PC, Birmingham, Alabama.

CASE INFORMATION

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

██████████ signed the Submission Agreement: December 21, 2018.

Statement of Answer filed by Respondent on or about: February 19, 2019.

Quick & Reilly, Inc. signed the Submission Agreement: February 19, 2019.

CASE SUMMARY

Claimant asserted the following causes of action: expungement of Occurrence Numbers ██████████ and ██████████

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of the underlying Claim from his CRD record pursuant to FINRA Rule 2080(b)(1)(A); 2080(B)(1)(C); 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 took no position on Claimant's request for expungement, but objected to request for one dollar in compensatory damages.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated May 24, 2019 and during the hearing Claimant's counsel informed the arbitrator that the customer related to Occurrence Number [REDACTED] was served with the notice of the hearing. Upon receipt of such notification, the customer contacted Claimant's counsel and allegedly stated that he was either not the customer involved or he had no recollection of the event.

By affidavit dated June 18, 2019, and during the hearing, Claimant's counsel stated that the customer for Occurrence Number [REDACTED] could not be located. Claimant lacked sufficient information as to the customer's whereabouts, and respondent failed to provide additional documentation.

The Arbitrator conducted a recorded telephonic hearing on June 19, 2019 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Respondent did not participate in the expungement hearing and did not contest the request for expungement.

The customers relating to Occurrence Numbers [REDACTED] and [REDACTED] did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator indicated that no settlement document existed relating to Occurrence Number [REDACTED]. The Arbitrator considered the amount of payments made to customer. The Arbitrator noted that the settlement was not conditioned on customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not sign a settlement agreement, but contributed to the settlement amount, and that the amount of the settlement was a sum equal to his commission.

The Arbitrator reviewed Claimant's BrokerCheck® Report and noted that Claimant did not previously file claim requesting expungement of the same disclosure in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's BrokerCheck® Report, and evidence and testimony presented at the expungement hearing by Claimant.

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 all references to Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("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 finding of fact:

The claim, allegation, or information is false.

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

Claimant testified that the instrument in question was a closed-end fund composed of equities and bonds, that he explained the risks of a closed-end fund to the customer, and specifically, that he explained the difference between closed-end and open-end funds and the meaning of NAV(net asset value). Claimant follows a script whenever he makes these disclosures to customers. Claimant also testified that the customer understood the risks, had invested in the market before, and that the customer was looking for a long-term investment of growth and income and was prepared to invest substantial money in the fund.

Claimant stated that, during three separate meetings with the customer, the customer asked clarifying questions, but never expressed concern about the investment, and, in fact, in the initial weeks after the initial investment the customer wanted to add more money, but that Claimant told him it was not possible or advisable.

Claimant further testified that, when the account began to decline and was showing a loss, the customer complained and stated that "the bank will give me my money back" because of his long-term relationship with Respondent. The customer then allegedly spoke with Claimant's manager and thereafter Respondent settled with the customer and paid the loss difference in the account, which included a contribution from the Claimant equal to his commission. Claimant testified that he is not aware of any written settlement agreement that was executed between the customer and Respondent, and that he never signed any settlement agreement.

Claimant testified that the CRD description of the type of fund investment is erroneous as it was composed of equities and bonds, and was not a U.S. Treasury Fund as described. The CRD indicates that the customer complained of an investment in a "US Treasury Fund."

FINRA Rule 2080 provides that expungement can occur if the "claim, allegation or information is false." I credit Claimant's testimony that the type of investment and the risks involved were explained to the customer and that the information and the allegation on the CRD is false. The CRD notes that the customer complained that Claimant "misrepresented the risk regarding a closed-end US Treasury Fund recommended in February 2004." I do not find evidence to support a claim that the investment was a closed-end US Treasury Fund investment.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository ("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 finding of fact:

The claim, allegation, or information is false.

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

Claimant testified that the instrument in question was a closed-end fund composed of equities and bonds, that he has explained the risks of a closed-end fund to the customer, and specifically, that he explained the difference between closed-end and open-end funds and the meaning of NAV(net asset value). Claimant follows a script whenever he makes these disclosures to customers. Claimant further testified that there was no written complaint ever made by the customer, that the customer had a personal relationship with the Respondent's branch manager at the time, and that when the relationship ended, the customer began "to make trouble" for the manager, which presumably included the customer's verbal complaint about the investment in the closed-end fund. The complaint was subsequently withdrawn by the customer.

According to Occurrence # [REDACTED] the customer allegedly complained that Claimant had "misrepresented a closed-end mutual fund in March 2004."

FINRA Rule 2080 provides that expungement can occur if the "claim, allegation or information is false." I credit Claimant's testimony that risks of the investment were explained to the customer and that the information and the allegation on the CRD is

false. The CRD describes that the investment was a closed-end mutual fund, which it was not.

3. 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
--------------------------	------------

**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 event giving rise to the dispute. Accordingly, as a party, Respondent Quick & Reilly, Inc. 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, including a pre-hearing conference with the arbitrator, 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: May 3, 2019	1 session

One (1) hearing session @ \$50.00/session	= \$ 50.00
Hearing Date: June 19, 2019	1 session

Total Hearing Session Fees	= \$100.00
----------------------------	------------

The Arbitrator assessed the \$100.00 hearing session fees to the Claimant.

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

ARBITRATOR

Albert Rizzo

-

Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature

Albert Rizzo
Sole Public Arbitrator

Signature Date

July 1, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)