

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: New York, New York

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Eric Litow, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: W. Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 17, 2018.

██████████ signed the Submission Agreement: May 17, 2018.

Statement of Answer filed by Respondent on or about: July 9, 2018.

Respondent signed the Submission Agreement: July 9, 2018.

CASE SUMMARY

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

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the occurrences from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or

clearly erroneous.

2. Expungement of the occurrences from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false.
3. An award of damages in the amount of \$1.00 from the Respondent.
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer Respondent did not object to or oppose Claimant's request for expungement. However, Respondent objected to the 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.

The Arbitrator conducted a recorded telephonic hearing on January 11, 2019 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers related to Occurrence Numbers [REDACTED] and [REDACTED] of the expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

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

The Settlement Agreement was not available for review by the Arbitrator. In recommending expungement, the Arbitrator indicated that he relied on Claimant's testimony and reviewed the documents entered into evidence. The Arbitrator considered the amount of payments made to the customers, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and 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: the pleadings, Claimant's BrokerCheck® Report, account records,

clients' correspondence and testimony presented at the expungement hearing by Claimant.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or 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 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 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:

In December 2002, the customers related to Occurrence Number [REDACTED] opened a non-managed, self-directed joint Cash Management Account ("CMA") with Respondent. At the time the customer (husband) was an expert in systems and information technology and worked for a number of securities firms, including Weeden & Co., throughout his career. He was a sophisticated and experienced 'hands on' investor. Expressing the need to generate income in anticipating retirement, he and Claimant discussed investments in financial institution and utility preferred securities. The customers eventually purchased a basket of eleven such names in 2007. These issues constituted approximately \$610,000 of their total investable portfolio of some \$4 million. It should also be noted that these purchases had to be and were approved by Weeden's Compliance Department.

In October 2008, alarmed by the impact of the Lehman Brothers bankruptcy and cracks in the financial markets, the customers sold out the account at a loss. All of the preferred investments continued to pay dividends throughout, were fully liquid and returned to profitability in short order.

The customers subsequently filed a FINRA arbitration against Claimant and Respondent in February 2009 alleging, in part, misrepresentation, suitability and unauthorized trading. The arbitration was settled by Respondent for a sum which essentially represented the cost and expense of defense.

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 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 customer related to Occurrence Number [REDACTED] became a client of Claimant in 2009. At the time her portfolio consisted of closed end bond funds and some mutual funds. After reviewing her goals and objectives, Claimant recommended a mix of mutual funds combining better returns with less risk. In 2012, in order to accommodate her desire to limit commission exposure, Claimant recommended that the account be ported over to a Merrill Personal Investment Advisor's ("PIA") discretionary account platform and positions rebalanced accordingly. She agreed. Approximately one month later, she sent an email to Claimant in which she complained about certain fee and charges in connection with the PIA account. The firm subsequently responded in detail to her allegations and denied the claim. It was not pursued.

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
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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 Merrill Lynch, Pierce, Fenner & Smith Inc. is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

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

December 5, 2018, postponement by Claimant = \$50.00

Total Postponements Fees = \$50.00

The Arbitrator has assessed \$50.00 of the postponement fees to Claimant.

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:

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

December 5, 2018, postponement requested Claimant = \$600.00

Total Last Minute Cancellation Fees = \$600.00

The Arbitrator has assessed \$600.00 of the last minute cancellation fees to Claimant.

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: September 19, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: January 11, 2019 1 session

Total Hearing Session Fees = \$100.00

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

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

ARBITRATOR

Robert E. Anderson

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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



Robert E. Anderson
Sole Public Arbitrator



Signature Date

February 11, 2019

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