

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

---

In the Matter of the Arbitration Between:

Claimant

Case Number:

vs.

Respondent

Hearing Site: San Francisco, California

Banc of America Investment Services Inc.

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

For Respondent Banc of America Investment Services Inc. ("Respondent"): Randi Spallina, Esq. and Patrick Mulligan, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

**CASE INFORMATION**

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

Statement of Answer filed by Respondents on or about: April 25, 2018.  
Respondent signed the Submission Agreement: April 25, 2018.

**CASE SUMMARY**

Claimant requested expungement of a FINRA arbitration case, occurrence number [REDACTED] ("Underlying Arbitration") from his Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondent advised that while it does not take a position on Claimant's request for expungement, it objects to Claimant's request for compensatory damages and provided further affirmative and other defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

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

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

At the expungement hearing, Claimant withdrew his request for \$1.00 in compensatory damages without objection.

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

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

On January 4, 2019, Claimant provided a copy of his notice to the customers in the Underlying Arbitration ("Customers") regarding the Statement of Claim and notice of the expungement hearing. On January 8, 2019, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customers had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on February 11, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Customers did not appear at the expungement hearing. The Arbitrator found that although the Customers were notified of the matter and provided with an opportunity to attend and participate in the expungement hearing, they elected not to do so.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator reviewed the settlement documents from the Underlying Arbitration and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that Claimant was not a party to the settlement and did not contribute to the settlement amount. The Arbitrator noted that the settlement amount of \$75,000.00 was a nominal amount (less than 10%) considering the damage claim of \$800,000.00 and that the BrokerCheck® Report indicates that Respondent settled the case in order to avoid the cost and uncertainty of litigation. The Arbitrator further determined that the settlement agreement was not conditioned upon the Customer's agreement not to oppose expungement.

The Arbitrator noted that Claimant did not previously request expungement of the Underlying Complaint.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim with accompanying exhibits and Claimant's BrokerCheck® Report.

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 all references to the Underlying Complaint, occurrence number [REDACTED], from Claimant [REDACTED] (CRD# [REDACTED] registration records maintained by the CRD, 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Claimant did not manage any of the Customers' account in question - the Consulting Services Selects Sub-Advisory Accounts ("CSSS Accounts"). This means that Claimant had no discretion over the investment decisions of the CSSS Accounts. Under the CSSS Accounts, the Customers entered into agreements with separate account managers who were responsible for making the investment decisions consistent with the Customers' investment objectives and risk tolerance.

The Customers withdrew considerable amounts from their CSSS Accounts in order to renovate a property. The withdrawals were in excess of the amounts needed for their living expenses. Nonetheless, in October

2008, their accounts showed a market gain of \$37,146.00. In November 2008, despite the substantial market losses due to the Great Recession, the Customers' accounts had lost only \$24,125.33, which was less than the gain from October 2008. Any losses were part of the normal market downturns, and not due to unsuitability or misrepresentations.

The Customers were sophisticated investors who traded in stocks and bonds. Mr. L (one of the Customers) was a real estate agent and CPA. Mr. L was also the CFO and CEO of a construction company who also held its Employee Stock Ownership Plan ("ESOP") account for his company and its employees with Claimant. The ESOP account was not part of the Underlying Arbitration.

Finally, the Underlying Arbitration is the only complaint that is on Claimant's BrokerCheck® Report after a career in the financial industry since 1993. Public disclosure of these false and erroneous allegations does not offer any public protection and has no regulatory value.

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(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
------------------	-------------

#### **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: July 18, 2018	1 session

One (1) Hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Dates: February 11, 2019 1 session	
<hr/>	
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**

Arocles Aguilar

-

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**



\_\_\_\_\_  
Arocles Aguilar  
Sole Public Arbitrator



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

\_\_\_\_\_  
February 20, 2019

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