

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number: [REDACTED]

vs.

Respondent
WFP Securities

Hearing Site: San Diego, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Frances Menzer, JD, HLBS Law, Westminster, Colorado.

For Respondent WFP Securities ("Respondent"): John Schooler, WFP Securities, San Diego, California.

CASE INFORMATION

Statement of Claim filed on or about: December 25, 2018.
Amended Statement of Claim filed on or about: April 26, 2019.
Claimant signed the Submission Agreement: December 21, 2018.

Statement of Answer filed by Respondent on or about: April 7, 2019.
Respondent signed the Submission Agreement: May 14, 2019.

CASE SUMMARY

Claimant asserted a claim seeking 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 it does not contest Claimant's request for expungement.

In the Amended Statement of Claim, Claimant included additional factual allegations.

RELIEF REQUESTED

In the Statement of Claim and Amended 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. 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 requested:

1. Claimant's request for expungement be granted; and
2. Claimant's request for any other damages be dismissed.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 1, 2019, Claimant provided notice that a copy of the Amended Statement of Claim and notice of the expungement hearing had been served on the relevant customers in the Underlying Arbitration ("Customers"). The Arbitrator noted that, of all the claimants in the Underlying Arbitration, only the Customers were clients of Claimant.

On July 15, 2019, Claimant filed an Affidavit of Service signed by Claimant's counsel, advising that a copy of the Statement of Claim had been served on the Customers.

The Arbitrator conducted a recorded telephonic hearing on August 6, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not contest the request for expungement. The Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator reviewed the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement agreement shows a much larger sum as the settlement amount than listed on Claimant's BrokerCheck® Report. The BrokerCheck Report, which shows \$15,000.00, is accurate because all but \$15,000.00 of the settlement amount is the market price that Respondent paid to buy back the Customers' investments.

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 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: Claimant's BrokerCheck® Report; the Customers' Asset Allocation Questionnaire; the Customers' Direct Purchase Application Form; the First Amended Complaint filed by the Customers in the Underlying Arbitration; and Claimant's testimony.

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, and post-hearing submissions, 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 Arbitration, occurrence number [REDACTED] from the 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 of Arbitration Procedure ("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 claim, allegation, or information is false.

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

The Customers involved in occurrence number [REDACTED] the occurrence sought to be expunged in this matter, pursued their claim by joining an existing arbitration claim brought by unrelated parties against a slew of respondents which had not included the Claimant here, [REDACTED]. Many of the allegations in the first amended complaint relate only to the unrelated parties or the respondents other than Claimant. Of the ones that may relate to Claimant, all

but one make accusations without a single allegation of supporting fact. The one that does alleges that Claimant recommended unsuitable investments. Claimant testified credibly that the Customers insisted on investing in high risk alternative investments, such as the Direct Participation Programs (“DPP”), for which he served as the Customers’ broker. The Customers’ behavior reinforces this testimony. The Customers began purchasing the DPPs in 2006 and continued to purchase them until the financial crisis undermined their value. All of the DPPs were consistent with the Customers’ desires, expressed in their own handwriting, to make high risk, long term investments consistent with their aggressive, growth profile. The allegation that Claimant recommended unsuitable investments, is false and clearly erroneous.

These findings are reinforced by the fact that Respondent settled the Customers’ \$600,000.00 claim for \$15,000.00, to which Claimant contributed nothing.

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
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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, Respondent is assessed the following:

Member Surcharge	=\$ 150.00
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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: June 4, 2019	1 session

One (1) hearing session on expungement request @ \$50.00/session	=\$50.00
Hearing Date: August 6, 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

Mark R. Lee

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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



Mark R. Lee
Sole Public Arbitrator

AUG. 28, 2019

Signature Date

August 28, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)