

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Morgan Keegan & Company, LLC

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Christopher Cummins, Esq. and Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Morgan Keegan & Company, LLC (“Respondent”): Stanton A. Fears, Esq., Raymond James Financial, St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed on or about: December 21, 2018.
Amended Statement of Claim filed on or about: February 8, 2019.
Claimant signed the Submission Agreement: December 21, 2018.

Statement of Answer filed by Raymond James & Associates, Inc. (“RJA”) on or about: January 30, 2019.
RJA signed the Submission Agreement: January 30, 2019.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a FINRA arbitration case (“Underlying Arbitration”), occurrence number 1493089, from his Central Registration Depository (“CRD”) records.

In the Amended Statement of Claim, Claimant provided additional background and factual information regarding the Underlying Arbitration.

In the Statement of Answer, Respondent advised that it does not oppose Claimant’s request for expungement and, as a result of the foregoing, Respondent’s further advised that its participation in the matter is unnecessary and does not anticipate

appearing in the matter including participating in the ranking of the proposed arbitrators and attending any hearing associated in the matter.

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. 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 and further requested expungement of the Underlying Arbitration from his CRD records pursuant to FINRA Rule 2080(b)(1)(B) as the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator found that RJA is the apparent successor to Respondent and answered on behalf of Respondent.

On May 15, 2019, Claimant provided a copy of his notice to the customer in the Underlying Arbitration ("Customer") regarding the Statement of Claim and notice of the expungement hearing. On May 24, 2019, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on July 9, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement.

RJA did not appear at the expungement on behalf of Respondent and, as stated in the Statement of Answer, did not contest the expungement request. The Customer also did not appear at the expungement hearing. The Arbitrator found that the Customer was notified of the expungement hearing and provided with an opportunity to participate, but 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 that Respondent settled the Underlying Arbitration without consulting Claimant. Further, the Arbitrator noted that Claimant did not make any payments or contribute to the settlement amount. The Arbitrator 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 same disclosure in the CRD.

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

- Claimant's BrokerCheck® Report;
- Claimant's oral testimony at the expungement hearing;
- Claimant's Hearing Exhibit 1 – Investment Profile Questionnaire dated November 18, 2004;
- Claimant's Hearing Exhibit 2 – Preferred Advisor Program dated November 18, 2004;
- Claimant's Hearing Exhibit 3 – New Account Form;
- Claimant's Hearing Exhibit 4 – Preferred Advisor Client Agreement;
- Claimant's Hearing Exhibit 5 – Trade Confirmation – RMK Advantage – Trade Date August 16, 2007;
- Claimant's Hearing Exhibit 6 – Trade Confirmation – RMK Advantage – Trade Date August 17, 2007;
- Claimant's Hearing Exhibit 7 – Account Statement – Statement Period September 1, 2007 – September 30, 2007;
- Claimant's Hearing Exhibit 8 – Settlement Agreement and Release; and
- Claimant's Hearing Exhibit 9 – SEC Order.

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 Arbitration, occurrence number [REDACTED] from Claimant [REDACTED] [REDACTED] (CRD# [REDACTED] registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, [REDACTED] [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 claim, allegation, or information is factually impossible or clearly erroneous.

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

The claim, allegation, or information is false.

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

The Underlying Arbitration alleged misrepresentation and unsuitability with regards to a mutual fund purchased in 2007. The Customer filed the Underlying Arbitration against Respondent but not Claimant.

The evidence, pleadings and testimony showed that Claimant gave the Customer suitable advice and did not misrepresent any information. Rather, the fraud and intentional misleading information on the mutual fund was given by Mr. JK, Respondent's mutual fund advisor. Claimant was unaware of Mr. JK's advice and could not have discovered it.

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

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: April 30, 2019 1 session

One (1) Hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: July 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

Michael J. Ahlstrom

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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

Michael J. Ahlstrom 7-18-19
Michael J. Ahlstrom Signature Date
Sole Public Arbitrator

July 18, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)