

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Omaha, Nebraska

Cetera Investment Services, LLC

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] (“Claimant”): Dochter Kennedy, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Cetera Investment Services, LLC (“Respondent”): Jeremy Carr, Esq., Cetera Financial Group, El Segundo, California.

CASE INFORMATION

Statement of Claim filed on or about: January 26, 2017.
Claimant signed the Submission Agreement: January 26, 2017.

Statement of Answer filed on or about: March 14, 2017.
Respondent signed the Submission Agreement: March 17, 2017.

CASE SUMMARY

Claimant asserted the following cause of action: expungement. The cause of action related to four underlying customer complaints (“Underlying Complaints”) against Claimant. The customers in the Underlying Complaints (“Customers”) alleged misrepresentations and unsuitability involving their investments in variable annuities, including ING and Hartford variable annuities.

In the Statement of Answer, Respondent took no position with respect to Claimant’s request for expungement, but opposed Claimant’s request for damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$1.00 in damages, expungement of all references to Occurrence Numbers [REDACTED], [REDACTED], [REDACTED] and [REDACTED] from Claimant’s registration records maintained by the Central Registration Depository (“CRD”), and other appropriate relief.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for \$1.00 in damages and assess all forum fees against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about September 20, 2017, Respondent filed a Response to Claimant's Request for Production, which stated that Respondent was unable to locate any of the settlement documents related to Claimant's request for expungement ("Response"). The Arbitrator considered this Response as part of his decision. Although the Arbitrator was unable to review the settlement agreements, he reviewed information about the settlements contained in Claimant's BrokerCheck® Report.

On or about August 9, 2017, Claimant filed Service Letters to Customer YE, Customer BH, and Customer VM, which included copies of the Statement of Claim and notice of the hearing date on which Claimants' request for expungement would be considered. On or about August 9, 2017, Claimant filed the obituary of Customer MH. On or about August 14, 2017, Claimant filed an Affidavit of Service, certifying that Customer YE, Customer BH, and Customer VM had been served with copies of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 9, 2017 ("telephonic hearing"), 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 Claimant's request for expungement. The Customers did not participate in the expungement hearing and did not contest Claimant's request for expungement.

In his Order dated October 16, 2017, the Arbitrator ordered Claimant to provide service to the estate of Customer MH and to the daughter of Customer YE, who filed the original claim, of Claimant's Statement of Claim and a letter with instruction on how to respond to the issue of expungement. Additionally, the Order provided the estate of Customer MH and the daughter of Customer YE until December 1, 2017, to respond to Claimant's Statement of Claim. On or about November 1, 2017, Claimant filed a copy of the service letters which were sent to the estate of Customer MH and the daughter of Customer YE. No response to the service letters was received.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator found that there were settlements relating to Occurrences Numbers [REDACTED], [REDACTED], and [REDACTED]. The Arbitrator found that First National Bank of Omaha ("the Bank") settled these matters without Claimant's participation. The Arbitrator considered the amount of payments made to the Customers and considered any other terms and conditions of the settlements, as testified to at the hearing. Through further testimony, the Arbitrator found that the settlements were not conditioned on the Customers not opposing the request for expungement. The Arbitrator found that Claimant did not contribute to the settlement amounts.

The Arbitrator found that there was no settlement relating to Occurrence # [REDACTED].

The Arbitrator found 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 testimony of Claimant.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submission, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. [REDACTED] claim for compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], and [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, the Arbitrator has made the following Rule 2080 affirmative findings of fact relating to Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED]:

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings relating to Occurrence Numbers [REDACTED], [REDACTED] and [REDACTED] based on the following reasons:

The evidence stated at the telephonic hearing indicated that, as to Customer BH in Occurrence # [REDACTED], members of her investment club suggested sending the complaint letter as a means of recovering from losses, but that Customer BH, in person, apologized for the complaint and her husband indicated that the investment was appropriate.

The customer in Occurrence # [REDACTED] appears, from the testimony presented at the telephonic hearing, to have been rather sophisticated in the area of variable annuities. He picked out an unusual annuity that would allow him to time the market, even though that is not the basic purpose for such annuities. No evidence of a misrepresentation was presented. As mentioned above, the customer's estate was notified, but failed to submit a written response as to this expungement matter.

Customer VM in Occurrence [REDACTED] purchased her annuity from a prior advisor. She apparently was burning through funds, contrary to the original plan, prior to Claimant taking over her account. Moreover, as with the other accounts, once the Bank determined to leave their brokerage department, Customer VM was left with an account that had no broker.

It appears that the Bank's actions, rather than Claimant's actions, were the chief cause of the Customers' concerns, transforming into the Underlying Complaints at issue here. Accordingly, the Bank, not Claimant, settled the Underlying Complaints without contribution by Claimant.

Expungement as to these three occurrences is merited pursuant to FINRA Rule 2080(b)(1)(C) due to the allegations being false.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact relating to Occurrence [REDACTED]:

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

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings relating to Occurrence # [REDACTED] based on the following reasons:

As to the complaint of Customer YE in Occurrence # [REDACTED], the evidence stated at the telephonic hearing indicated that Customer YE's purchase was made through a prior advisor who determined suitability. Claimant did his own suitability review and discussed investment choices with Customer YE. Customer YE's grandson and another relative participated. None of the participants lodged a complaint. The complaint was lodged by Customer YE's daughter, who did not attend the meetings, despite being invited to do so. As indicated above, Customer YE's daughter did not file a written response as to this expungement matter.

The Arbitrator finds, that as to Occurrence [REDACTED], Claimant was not involved in the alleged investment-related sale practices violation, and thus expungement is merited under FINRA Rule 2080(b)(1)(B).

Expungement as to Occurrence [REDACTED] is merited pursuant to FINRA Rule 2080(b)(1)(C) due to the allegations being false.

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
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Cetera Investment Services, LLC is assessed the following:

Member Surcharge	=\$ 150.00
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Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	=\$ 200.00
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[REDACTED] submitted one (1) discovery-related motion	
Total Discovery-Related Motion Fees	=\$ 200.00

The Arbitrator has assessed \$200.00 of the discovery-related motion fees to [REDACTED]

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: July 17, 2017	1 session

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: October 9, 2017	1 session

Total Hearing Session Fees	=\$ 100.00
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The Arbitrator has assessed \$100.00 of the hearing session fees to [REDACTED]

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

ARBITRATOR

Charles G. Michaels

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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

/s/ Charles G. Michaels

Charles G. Michaels
Sole Public Arbitrator

12/18/2017

Signature Date

12/18/2017

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

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

ARBITRATOR

Charles G. Michaels

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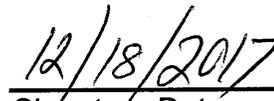
Sole Public Arbitrator

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



Charles G. Michaels
Sole Public Arbitrator



Signature Date

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