

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Transamerica Financial Advisors, Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

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

For Respondent Transamerica Financial Advisors, Inc. (“Respondent”): Susan D. Duff, Esq., Transamerica Financial Advisors, Inc., St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 26, 2018.

Claimant signed the Submission Agreement: February 26, 2018.

Answer to Statement of Claim filed by Respondent on or about: May 4, 2018.

Respondent signed the Submission Agreement: May 4, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a customer dispute, occurrence number ██████████ (“Underlying Complaint”) from his Central Registration Depository (“CRD”) records.

In the Answer to the Statement of Claim, Respondent advised that it takes no position as to whether Claimant is entitled to expungement of the Underlying Complaint. Respondent denied that any monetary relief from Respondent is authorized or appropriate and took the position that Claimant should pay all forum fees in connection with this matter.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint 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 Underlying Complaint from his CRD record 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 the Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

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

At the hearing, Claimant withdrew his request for \$1.00 in damages against Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

On November 2, 2018, FINRA notified the parties that it would replace the arbitrator assigned to this matter. On November 5, 2018, FINRA appointed a replacement arbitrator ("Arbitrator").

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

On September 10, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on [REDACTED], the customer in the Underlying Complaint.

On October 3, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that [REDACTED] was served with the Statement of Claim.

On October 17, 2018, Claimant provided a copy of notice regarding the rescheduled expungement hearing set for October 18, 2018 that had been served on [REDACTED]

The previously appointed arbitrator conducted a recorded telephonic hearing on October 18, 2018 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 Arbitrator listened to the recording of the hearing held on October 18, 2018. The Arbitrator found that [REDACTED] had notice of the expungement hearing but did not participate.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator noted that the Underlying Claim was not settled and therefore there were no settlement documents to review.

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: BrokerCheck® Report and CRD Snapshot for Claimant; Claimant's testimony; Claimant's California Application for Life Insurance; Claimant's Customer Account Information; Claimant and [REDACTED] January 9, 2009 letter to Western Reserve Life; and Respondent's Answer to the Statement of Claim.

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 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 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 findings based on the following reasons:

[REDACTED] was the wife, not a customer, of Claimant, and given the surrounding circumstances, it appears the allegation was falsely made to gain a tactical advantage in the divorce proceedings that were pending between the parties. Claimant testified that the allegations made by the accuser were the subject of a court hearing and that the Court found the allegations to be false. No evidence was presented to support the allegations.

Accordingly, Claimant has met the standard for expungement for Occurrence Number [REDACTED]. Expungement is warranted pursuant to FINRA Rule

2080(b)(1)(B)—that Claimant was not involved with an alleged sales practice violation. The accusing "customer", [REDACTED], was not an actual customer of the Claimant nor the Respondent, there were never any transactions made on her behalf, and there was no alleged sales practice violation. Further, expungement also is warranted pursuant to FINRA Rule 2080(b)(1)(A) and (C)—that the allegations are clearly erroneous or factually impossible, or false. The evidence has shown that Claimant took a loan in his own account with [REDACTED] permission and did not forge her signature, as alleged.

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 12, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: October 18, 2018	1 session

Total Hearing Session Fees	= \$100.00
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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

Joseph C. Watson

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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



Joseph C. Watson
Sole Public Arbitrator

November 20, 2018

Signature Date

November 21, 2018

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