

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

Brecek & Young Advisors, Inc.
Securities America, Inc.

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC and Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

Brecek & Young Advisors, Inc. (“Brecek”) did not enter an appearance.

For Respondent Securities America, Inc. (“Respondent”): Chad Weaver, Esq. and Joseph Suarez, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

CASE INFORMATION

Statement of Claim filed on or about: March 13, 2018.

Amended Statement of Claim filed on or about: April 27, 2018.

Claimant signed the Submission Agreement: March 13, 2018.

Claimant signed the Amended Submission Agreement¹: April 27, 2018.

Statement of Answer filed by Respondent on or about: May 3, 2018.

Amended Statement of Answer filed by Respondent on or about: July 18, 2018.

Respondent did not sign the Submission Agreement.

CASE SUMMARY

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

¹ The Amended Submission Agreement reflects Securities America, Inc. as respondent.

In the Amended Statement of Claim, Claimant removed Brecek as the respondent and asserted the same claim against Respondent. Claimant further advised that Respondent was formally known as Brecek.

In its Statement of Answer, Respondent advised that it did not oppose Claimant's expungement request of the Underlying Arbitration from his CRD records. Respondent submitted an Amended Statement of Answer which did not differ from the Statement of Answer.

RELIEF REQUESTED

In the Statements of Claim, Claimant requested:

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

In the Statement of Answer and Amended Statement of Answer, Respondent requested that Claimant's request for an award of damages be denied.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and having answered the claim and appeared at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On August 22, 2018, the Arbitrator ordered Claimant to provide a copy of the Amended Statement of Claim to the customer(s) involved in the arbitration case that gave rise to the Underlying Arbitration. The Arbitrator also ordered Claimant to submit a copy of the settlement agreement in the Underlying Arbitration.

On October 1, 2018, Claimant provided notice that a copy of the Amended Statement of Claim and notice of the expungement hearing had been served on the trustee ("Mr. Z") for the trust which was the claimant in the Underlying Arbitration. The Arbitrator noted that the trust was comprised of a group of customers, only one of which was Claimant's customer ("Mr. M").

On October 15, 2018, Claimant submitted an Affidavit of Service advising that Mr. Z was served with a copy of the Statement of Claim.

On November 29, 2018, Claimant provided notice that a copy of the Amended Statement of Claim and notice of the expungement hearing had been served on Mr. M.

On December 3, 2018, Claimant submitted an Affidavit of Service, signed by Claimant's counsel advising that Mr. M had been served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on December 11, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent appeared at the hearing and, as stated in the Statements of Answer, did not oppose Claimant's request for expungement. Mr. Z and Mr. M did not appear at the expungement hearing. The Arbitrator found that Mr. Z and Mr. M received notice of the expungement hearing.

On March 28, 2019, Claimant filed a submission regarding the settlement agreement in the Underlying Arbitration. In the submission, Claimant's counsel advised:

Upon information and belief, after conferring with Respondent's Counsel and Claimant, the settlement agreement listed on Claimant's BrokerCheck is referring to the same settlement agreement that was signed and dated on December 21, 2012. On March 4, 2019, Claimant requested the alleged settlement dated 2015, Respondent's counsel turned over the December 21, 2012 settlement and stipulation with prejudice . . . Based on this, Respondent does not possess the alleged settlement in 2015. Claimant has no knowledge of any other settlement, with the exception of the 2012 settlement.

On September 4, 2015, [Mr. Z] appears to have attempted to take a second bite at the apple and filed another lawsuit naming Claimant. On or about December of 2015, it appears that the case was dismissed with prejudice . . . It is counsel's belief that the case was dismissed with prejudice because there was already a prior settlement regarding [Mr. Z]. Both filings by [Mr. Z], Claimant was told by his compliance department that there was nothing he needed to do, they were handling it.

In conclusion, the conduct and allegations concerning DBSI has not changed and Claimant had no knowledge of the fraudulent activity of DBSI and the allegations against Claimant are false. Upon information and belief, Respondent properly updated the CRD to reflect the second bite at the apple filed by [Mr. Z] on September 4, 2015.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed the Stipulation and Confidential Agreement Settling the Trustee's Claim Against [Brecek] and Dismissing the Adversary Proceeding with Prejudice between Mr. Z, as litigation trustee for a separately named trust and Brecek dated December 12, 2012 ("2012 Settlement Agreement").

The Arbitrator noted that he cannot determine whether the 2012 Settlement Agreement relates to the Underlying Arbitration or if the Underlying Arbitration resulted in a separate

settlement agreement. However, based on Claimant's testimony and the BrokerCheck® Report, the Arbitrator found that Claimant was not involved in the settlement of the Underlying Arbitration and 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 testimony; Statement of Claim and exhibits; and the 2012 Settlement Agreement.

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 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, 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:

Mr. M was dissatisfied with his previous advisor and needed help in developing a plan to manage his assets and arrange for retirement. Mr. M became a client of Claimant, who was registered at Brecek. Together they ascertained Mr. M's investment objectives and risk tolerance. Claimant recommended various investments to Mr. M and he chose to invest as Claimant recommended as well as to diversify his portfolio. Based on Mr. M's profile and objectives, Claimant recommended an investment in Diversified Business Services and Investment ("DBSI") which was strongly recommended by Brecek. In July 2008, Mr. M

elected to invest \$150,000, which represented approximately 7.5% of Mr. M's portfolio, in DBSI.

On November 10, 2008, DBSI filed for Chapter 11 bankruptcy protection. Mr. M expressed his concerns to Claimant regarding DBSI. Claimant was not able to obtain information and Brecek took over the investment and the related legal processes. In January 2009, Claimant transferred his registration from Brecek to Respondent. On August 20, 2014, DBSI's founder and CEO was sentenced to 240 months in prison for securities fraud and DBSI's General Counsel was sentenced to 60 months in prison for fraud.

The Arbitrator finds that Claimant was not involved in any of the fraudulent conduct by DBSI and that Claimant accurately represented the DBSI investment as it was presented to him, and made a suitable recommendation based on the information available to him.

The Arbitrator finds that the evidence does not support the claim, allegation or information. Pursuant to FINRA Rule 2080(b)(1)(A), it is impossible or clearly erroneous and therefore recommends expungement of the Underlying Arbitration.

The Arbitrator finds that the evidence does not support the claim, allegation or information pursuant to FINRA Rule 2080(b)(1)(C) and therefore recommends expungement of the Underlying Arbitration.

2. Any all other relief not specifically addressed herein is 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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Accordingly, as a party, Brecek 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: August 22, 2018 1 session

One (1) expungement hearing session @ \$50.00/session = \$50.00
Hearing Date: December 11, 2018 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.

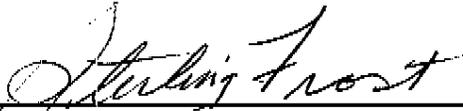
ARBITRATOR

Sterling N. Frost

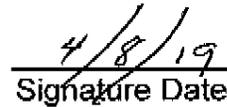
Sole Public Arbitrator

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



Sterling N. Frost
Sole Public Arbitrator



Signature Date

April 15, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)