

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Milwaukee, Wisconsin

Ameriprise Financial Services, Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Ameriprise Financial Services, Inc. ("Respondent"): Howard M. Klausmeier, Esq., Ameriprise Financial Services, Inc., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: December 28, 2018.

Claimant signed the Submission Agreement: December 28, 2018.

Statement of Answer filed on or about: February 26, 2018

Respondent signed the Submission Agreement: February 19, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent concurred in Claimant's request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number [REDACTED] from his CRD records, an award of compensatory damages in the amount of \$1.00 from Respondent, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator recommend

expungement of the subject occurrence from the CRD record of Claimant and deny any and all relief requested against Respondent.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about June 28, 2019, Claimant filed a copy of the letter sent to the customer related to Occurrence Number [REDACTED] (the Customer), providing the Customer with notice of the expungement hearing, notice of the opportunity to participate in the expungement hearing, and a copy of the Statement of Claim. On or about July 15, 2019, Claimant filed an Affidavit of Service for the letter which was sent to the Customer. On or about July 18, 2019, Claimant filed proof of delivery for the letter which was sent to the Customer.

The Arbitrator conducted a recorded, telephonic hearing on July 31, 2019 and August 1, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearings but did not contest the request for expungement. The Customer did not participate in the expungement hearings.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator noted that Occurrence Number [REDACTED] did not involve a settlement. Accordingly, the Arbitrator did not review any settlement documents.

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 and Exhibits, including the Customer's monthly account statements, which contained sections on realized gain/loss details and summaries; documents containing written disclaimers advising that financial advisors are not authorized or licensed to give tax advice; and correspondence to the Customer containing a general disclosure that Respondent and its financial advisors are not authorized to give tax or legal advice and recommending that customers consult with their professional tax advisors.

### **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. 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; and
- The claim, allegation, or information is false.

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

The Customer alleged that Claimant failed to communicate the tax consequences of selling stocks which resulted in large capital gains. At the hearing, Claimant testified and submitted exhibits which indicated that the Customer was advised verbally and in writing to get tax advice. According to Claimant's credible testimony: Claimant told the Customer that there would be tax consequences to rebalancing the portfolio upon the sale of stocks. Claimant verbally discussed tax consequences and advised the Customer to contact a CPA and also suggested a strategy for how to pay through another investment. Claimant advised the Customer orally and in writing that he was not licensed to give tax advice. Claimant gave the Customer the name of a CPA. Claimant testified that the reallocation resulted in an overall gain which far exceeded the tax consequence.

2. 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, 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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions @ \$50.00/session = \$ 100.00

Pre-hearing conferences: May 8, 2019 1 session

May 29, 2019 1 session

Two (2) hearing sessions @ \$50.00/session = \$ 100.00

Hearing Dates: July 31, 2019 1 session

August 1, 2019 1 session

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Total Hearing Session Fees = \$ 200.00

The Arbitrator has assessed \$200.00 of the hearing session fees to Claimant.

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

**ARBITRATOR**

Susanne J. Hollander

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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**

***Susanne J. Hollander***

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Susanne J. Hollander  
Sole Public Arbitrator

08/27/2019

\_\_\_\_\_  
Signature Date

August 27, 2019

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