

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

A. G. Edwards & Sons, Inc.

Hearing Site: New Orleans, Louisiana

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

For Respondent A. G. Edwards & Sons, Inc. (“Respondent”): Patricia E. Cowart, Esq., Wells Fargo Law Department, Fort Lauderdale, Florida.

**CASE INFORMATION**

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

Claimant signed the Submission Agreement: December 21, 2018.

Statement of Answer filed by Respondent on or about: February 19, 2019

Respondent signed the Submission Agreement: January 17, 2019.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a NYSE Arbitration, occurrence number ██████████ and a customer complaint, occurrence number ██████████ (collectively, “Underlying Claims”), from her Central Registration Depository (“CRD”) records.

In the Statement of Answer, Respondent took no position with respect to Claimant’s requests for expungement but opposed Claimant’s request for \$1.00 in damages. In the Statement of Answer, Respondent also represented that it is now part of Wells Fargo Advisors.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from her 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 Claims from her CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
  3. Damages in the amount of \$1.00 from Respondent; and
  4. Any and all other relief that the Arbitrator deems just and equitable.

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

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

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

On May 31, 2019, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on: the customer in occurrence number [REDACTED] ("Mr. H"); and the customers in occurrence number [REDACTED] ("Mr. and Mrs. S"). Hereinafter, Mr. H and Mr. and Mrs. S are collectively referred to as the "Customers."

On July 2, 2019, Claimant filed an Affidavit of Service, signed by Claimant's counsel, advising that the Customers had been served with copies of the Statement of Claim.

On July 1, 2019, Claimant submitted expungement hearing exhibits which included email correspondence from Mr. H to Claimant's counsel on June 19, 2019, in which Mr. H opposed Claimant's request for expungement.

The Arbitrator conducted a recorded telephonic hearing on July 2, 2019 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 Customers did not participate in the expungement hearing. The Arbitrator noted that Mr. H opposed the expungement request in writing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

The Arbitrator noted that occurrence number [REDACTED] was listed as "Closed/No Action" on Claimant's BrokerCheck® Report and that an award was issued for occurrence number [REDACTED]. Accordingly, the Arbitrator found there were no settlement documents to review.

During the expungement hearing on July 2, 2019, the Arbitrator ordered Claimant to submit further evidence proving that the Customers received notice of the hearing. On July 3, 2019, Claimant submitted a Corrected Affidavit of Service stating that the May 31, 2019 notice letter was sent to Mr. and Mrs. S's last known address and the current address of their daughter. The Corrected Affidavit of Service also included obituaries of both Mr. and Mrs. S. After considering Claimant's service letters to the Customers, the

Affidavit of Service and the Corrected Affidavit of Service, the Arbitrator found that the Customers had notice of the expungement request and hearing.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim with Exhibits, Statement of Answer, Claimant's testimony and exhibits, Claimant's BrokerCheck® Report, and Claimant's May 31, 2019 service letters to the Customers.

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 the Underlying Claims, occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

Occurrence Number [REDACTED] (in which Mr. H is the underlying customer)

Customer alleged Claimant failed to timely execute an order. While Mr. H did submit an opposition to Claimant's expungement, credible evidence demonstrated that Claimant followed Mr. H's instructions given to her. Mr. H did not instruct Claimant to sell any units in the trust. Rather, Mr. H informed Claimant that he wanted the investment to mature and not to reinvest after maturity. Therefore, expungement is appropriate.

Occurrence Number [REDACTED] (in which Mr. and Mrs. S are the underlying customers)

Customers alleged Claimant made unsuitable investments on Mr. and Mrs. S' behalf. The investments were suitable for and met the needs of Mr. and Mrs. S at the time they were made. The investments performed pursuant to the investment strategy and the accounts were overall profitable. Therefore, expungement is appropriate.

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: May 3, 2019	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: July 2, 2019	1 session

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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**

Sherry R. Wetsch

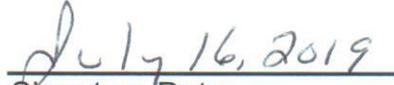
- Sole Public Arbitrator

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**



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Sherry R. Wetsch  
Sole Public Arbitrator

  
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Signature Date

July 16, 2019

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