

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

Credit Suisse Securities (USA), LLC

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Owen Harnett, Esq., HLBS Law and Docthor Kennedy, Esq., MBA, J.D., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Credit Suisse Securities (USA), LLC: Deborah Burstein, Esq., Credit Suisse Securities (USA), LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 15, 2018.

██████████ signed the Submission Agreement: May 15, 2018.

Statement of Answer filed by Respondent on or about: June 27, 2018.

Credit Suisse Securities (USA), LLC signed the Submission Agreement: June 28, 2018.

CASE SUMMARY

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository ("CRD") records. The cause of action relates to two (2) customer complaints, Occurrence Numbers ██████████ and ██████████, in connection with the sale of Auction Rate Securities ("ARS") and recorded by Respondent on Claimant's CRD records.

In the Statement of Answer, Respondent did not oppose the relief sought by Claimant in the Statement of Claim and advised it would not be participating in these proceedings.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence Nos. ██████████ and ██████████; compensatory damages in the amount of \$1.00; and any and all other relief deemed just and equitable by the Arbitrator.

In the Statement of Answer, Respondent requested that no forum fees be awarded against it.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 26, 2018 and November 12, 2018, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim and notice of the hearing upon the customer, via email, in Occurrence No. [REDACTED]. This customer did not file a response to Claimant's notice.

Regarding the customers in Occurrence No. [REDACTED], Claimant submitted an Affidavit dated November 12, 2018, advising that these customers live outside of the United States and did not wish to have their personal information public due to government concerns. For these reasons, Claimant stated he was unable to locate the customer through standard process. Claimant worked with counsel to find a contact on behalf of the customers and Claimant personally left a message with the contact informing them of his desire for expungement of the dispute and asking them to contact either himself or counsel if they wish to take part in the expungement proceeding. Claimant did not receive a call back and was unable to obtain any other means of communicating with the customers. The Chair determined that she was satisfied with Claimant's attempts to notify the underlying customers in Occurrence No. [REDACTED].

The Statement of Claim indicates that, pursuant to its fiduciary duty to its shareholders, Respondent repurchased the customers' ARS at their full par value. On September 10, 2018, the Chair Ordered that Respondent provide all settlement documents including related correspondence to Claimant. In response to the Order, Claimant filed an Affidavit of Doctor Kennedy dated November 2, 2018. The Affidavit advised, among other things, that Claimant's counsel requested the settlement agreements for the underlying Occurrences from Respondent but Respondent was unable to provide any responsive documentation. Also, the Affidavit indicates Claimant was not a party to and did not contribute to the settlements, and because of this, he does not have a copy of either settlement agreement. It is unclear whether or not the settlements were conditioned on the customers not opposing the requests for expungement. The Chair determined that Claimant's affidavit satisfies the requirement under Rule 13805(b) of the FINRA Code of Arbitration Procedure (the "Code").

The Arbitrator conducted a recorded telephonic hearing on November 28, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Neither the Respondent nor the underlying customers participated in the expungement hearing and did not contest the request for expungement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim and exhibits, Claimant's BrokerCheck® Report;

Submission of Expungement Hearing Exhibits; testimony of Claimant at the recorded telephonic expungement hearing; Claimant's Affidavit dated November 12, 2018; and Claimant's Affidavit dated November 2, 2018.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic expungement 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 Occurrence Nos. [REDACTED] and [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 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 with respect to Occurrence No. [REDACTED]:

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:

According to Claimant's testimony, and Claimant's written Statement of Claim which Claimant confirmed was accurate, the underlying customer became a wealth-management client of Claimant in 2006. At that time, the customer: was an experienced investor, having invested in many start-ups and technology-related investments; had a liquid net worth of \$3 million; had an investment objective of a balance between growth and income with a high risk tolerance; his liquidity needs were limited; and he had an investment horizon of more than five years (Statement of Claim ADL000002, Exhibit 1 and current BrokerCheck®).

Claimant testified that he recommended that the customer invest in Auction Rate Securities and equity manager WHV Investment Management. Claimant explained to the customer the terms, risks, fees, advantages and disadvantages of his investment recommendations, including the risk of possible illiquidity. The ARS investment was a product that was considered safe, provided weekly liquidity, and paid 1% over the London Inter-Bank Offer Rate ("LIBOR").

The ARS investment was a AAA rated long-term security and commonly used for cash management. The market for ARS was estimated to be \$330 billion in 2007 (Statement of Claim ADL 000057- 063, Exhibit 2). The customer invested

approximately 50% of his investible assets in the product in 2007. The market began to fail in February 2008, when the auction failures led to an industry-wide freezing of clients' accounts. Claimant did not cause or contribute to these market events.

On February 27, 2008, as a result of the failure of the ARS market, the customer lodged a verbal complaint with Respondent and sought \$2.5 million in damages. He also lodged a written complaint. In response, pursuant to an agreement between Respondent and its regulators, Respondent repurchased the ARS for their full par value from the customer. Claimant was not a party to that repurchase agreement, he did not make any contribution to the customer's redress, and the customer did not pursue his claim in arbitration or court.

Expungement pursuant to FINRA Rule 2080(b)(1)(A) and Rule 2080(b)(1)(C) is recommended because the claim allegedly arose out of the sale of the ARS to the customer prior to the date the illiquidity in the ARS market first occurred in February 2008. Claimant testified that, at the time the customer purchased the ARS, the investment was suitable given his investment profile and was AAA rated. Because the investment was suitable at the time it was made and because the loss to the customer resulted from a market failure after the investment was made rather than misrepresentations by Claimant, which caused the customer to purchase the ARS initially, the claim is erroneous, factually impossible and false. No contrary evidence to Claimant's testimony and evidence was presented.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact with respect to Occurrence No. [REDACTED]:

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; and

The claim, allegation, or information is false.

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

Claimant testified that in 2000, Respondent took the company Garmin Ltd. to its IPO. Beginning in or around 2003, four investors in Garmin, who resided in Taiwan, became clients of Claimant's colleague (Exhibit 13, Customer Due Diligence Form, ADL000 99-101; exhibit 9, New Account form, ADL 000085-88, Exhibit 14, Customer Information Worksheet, ADL 103-104) for investment of the proceeds from the IPO. In 2005, Claimant's colleague recommended an ARS to the four investors, who invested less than five percent of their investable assets in the product (Exhibit 14, Prequalification and Annual Meeting Form which shows investor had a net worth of \$12 million dollars). Claimant did not make any recommendation to the investors or sell them an ARS. In 2006, Claimant joined the team of his colleague however, the four investors were never clients of Claimant. Claimant testified that his job was to go to Taiwan once a year to meet with his colleague's clients, in a group setting, to assist with maintaining the relationship.

The ARS market failed in February 2008 (Exhibit 3. Auction Rate Securities, Wikipedia, Claimant's testimony). On June 25, 2008, according to Exhibit 1 to the Statement of Claim and Claimant's BrokerCheck® report, the four investors sent a letter to Respondent alleging that after the ARS auctions failed, the investors were informed that ARS were "frozen" (auction would not clear due to supply and demand imbalance), that they did not give instructions to invest in such securities and sought damages. The investors named Claimant's colleague and Claimant (as a member of her team with Respondent) in their written complaint. Claimant did not have the written complaint. The investors did not file an arbitration or civil litigation case. Pursuant to an agreement with regulators, Respondent paid the customers a settlement amount with respect to the claim. Claimant confirmed he was not a party to this agreement and did not contribute to this settlement between Respondent and the investors.

Claimant did not sell the investment to the investors therefore, no sales violation occurred. He did not join his colleague's team with Respondent until after the investors purchased the ARS and did not make any representations about the investment to the investors when he made his good-will visit to Taiwan in 2007. The investors had purchased this investment in 2005, and it was performing as expected. Expungement pursuant to FINRA Rule 2080(b)(1)(A), 2080(b)(1)(B), and Rule 2080(b)(1)(C) is recommended because the claim allegedly arose out of the sale of the ARS to the investors prior to the date the illiquidity in the ARS market first occurred in February 2008. Claimant testified, unopposed, that the investors were not his clients at the time the investors purchased the ARS and that he did not participate in the sale of the ARS to the investors or make recommendations. According to the evidence, the claim is erroneous, factually impossible and false. No contrary evidence to the testimony and evidence of Claimant was presented.

Claimant was unable to reach the underlying customers in this Occurrence. Regardless, the evidence is sufficient to show that a recommendation for expungement of the Occurrence is appropriate because of the non-involvement of Claimant in the sale of the investment to the investors, the loss resulted from the failure of the ARS market rather than the act of Claimant, and because the investors received par value of their investment from Respondent.

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: September 10, 2018	1 session	

One (1) hearing session on expungement request @ \$50.00/session	=	\$ 50.00
Hearing Date: November 28, 2018	1 session	

Total Hearing Session Fees	=	\$100.00
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The Arbitrator has assessed the total hearing session fees of \$100.00 to Claimant.

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

ARBITRATOR

Mary Margaret Bush

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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



Mary Margaret Bush
Sole Public Arbitrator

1/30/19

Signature Date

January 31, 2019

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