Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
███████████████

Case Number: ████████

vs.

Respondent
Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

From January 31, 2018, through January 10, 2019, Claimant ████████████████ was represented by Dochtor Kennedy, Esq., AdvisorLaw, LLC, Broomfield, Colorado. For the January 11, 2019, expungement hearing, Claimant was represented by Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc.: Joel M. Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: January 31, 2018.
████████████████ signed the Submission Agreement: January 31, 2018.

Statement of Answer filed by Respondent on or about: April 2, 2018
Merrill Lynch Pierce Fenner & Smith Inc. signed the Submission Agreement: April 3, 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 a previously-settled customer arbitration claim (Case No. ████████/Occurrence No. ████████ that was recorded by Respondent on Claimant's CRD records regarding the customers' ("the underlying customers") aggressive options trading in their nondiscretionary account.

In the Statement of Answer, Respondent did not take a position with respect to Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number ███████ from his CRD records; compensatory damages in the amount of $1.00 from Respondent; and any and all other relief that the Arbitrator deemed just and appropriate.

In the Statement of Answer, Respondent objected to Claimant's request for $1.00 in compensatory damages but did not delineate a specific relief request.

During the expungement hearing, Claimant withdrew his request for $1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 10, 2018, Claimant filed with FINRA Office of Dispute Resolution an affidavit in which Claimant's counsel attested that he researched and used all relevant documentation to search publicly-available information to find contact information for the underlying customers, but was not successful. The Arbitrator deemed this affidavit sufficient with respect to attempted service upon the underlying customers.

The Arbitrator conducted a recorded telephonic hearing on January 11, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement.

The underlying customers did not participate in the expungement hearing and did not contest the request for expungement. Respondent participated in the expungement hearing and did not contest the request for expungement.

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

Because the underlying customers did not settle with Respondent in Case Number ███████, there was no settlement for the Arbitrator to review.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, and the post-hearing submissions (if any), 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 ██████ from registration records maintained by the CRD for Claimant ████████████ (CRD# ████████), 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 of Arbitration Procedure (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:

A unanimous FINRA Panel denied the underlying claim in Case Number ████████ with prejudice.

The credible testimony of Claimant supports that the causes of action alleged in the underlying claim were false and clearly erroneous.

Claimant met frequently with the underlying customers and reviewed their portfolios with them. There were frequent telephonic discussions between Claimant and the underlying customers as well. The underlying customers were sophisticated investors and clearly understood their investments in the non-discretionary account. Claimant advised the underlying customers of the risks of overleverage and recommended a more conservative management of the account. All transactions were approved or initiated by the underlying customers, and they received confirmations of each transaction. The underlying customers' aggressive option strategy, which was pursued against Claimant's advice, suffered losses during the financial crisis of 2008—2009. The underlying customers' risk tolerance was aggressive. Claimant advised them to reduce their risk exposure but the underlying customers ignored his advice.

After the Award was issued in Case Number ████████, Respondent asked the underlying customers to leave the firm against their desire to remain clients of 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

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

Postponement Fees
Postponements granted during these proceedings for which fees were assessed or waived:

November 9, 2018, postponement by Claimant =$ 50.00
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Total Postponements Fees =$ 50.00

The Arbitrator has assessed the entire $50.00 postponement fee to Claimant.

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 18, 2018   1 session

One (1) hearing session on expungement @ $50.00/session =$ 50.00
Hearing Date: January 11, 2019   1 session
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Total Hearing Session Fees =$ 100.00

The Arbitrator has assessed the total $100.00 in hearing session fees to Claimant.

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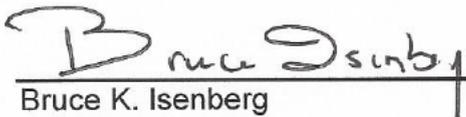
ARBITRATOR

Bruce K. Isenberg　　　　　　　-　　　　　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

Bruce Isnby　　　　　　　　　　　　　　01/18/2019

Bruce K. Isenberg　　　　　　　　　　　　Signature Date
Sole Public Arbitrator

January 18, 2019
_____
Date of Service (For FINRA Office of Dispute Resolution office use only)