

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

Prudential Equity Group, LLC
Wall Street Access

Hearing Site: Indianapolis, Indiana

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ Christopher Cummins, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Prudential Equity Group, LLC (“Prudential”): Alan S. Brodherson, Esq., Law Offices of Alan S. Brodherson, New York, New York.

For Respondent Wall Street Access (“WSA”): Denis Patrick Kelleher, Esq., Clayman & Rosenberg LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 12, 2018.

██████████ signed the Submission Agreement: July 12, 2018.

Statement of Answer filed by Respondent WSA on or about: September 4, 2018.

WSA signed the Submission Agreement: September 4, 2018.

Statement of Answer filed by Respondent Prudential on or about: September 4, 2018.

Prudential did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the cause of action of inaccurate reporting on his Central Registration Depository (“CRD”) records relating to three customer complaints (Occurrence Nos. ██████████ ██████████ and ██████████

In Occurrence No. ██████████ the customer alleged sales practice violations in connection with his investment in Polaris Aircraft Income Fund, II, a limited partnership (“Polaris LP”).

In Occurrence No. [REDACTED] the customers alleged misrepresentation in connection with their investment in Pilgrim Adjustable U.S. Government Securities Mutual Fund (the "Pilgrim Fund").

In Occurrence No. [REDACTED] the customers alleged unsuitability in connection with a Section 1035 exchange of an annuity for a mutual fund.

In the Statement of Answer, Respondent WSA stated that it takes no position whether the Arbitrator should expunge Claimant's CRD records.

In the Statement of Answer, Respondent Prudential stated that it takes no position on Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence Nos. [REDACTED] [REDACTED] and [REDACTED] from his CRD records; compensatory damages of \$1.00; and any and all relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent WSA requested that Claimant be assessed attorneys' fees and pay all forum fees.

In the Statement of Answer, Respondent Prudential requested denial of the request for \$1.00 in damages, and that all forum fees be assessed against Claimant.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Prudential 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, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On or about January 14, 2019, Claimant filed with FINRA Office of Dispute Resolution proof of service upon one of the surviving underlying customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] of the Statement of Claim in this matter, notice of the date and time of the upcoming expungement hearing, and of the underlying customers' right to participate therein. The customers did not submit any response thereto.

On or about January 14, 2019, Claimant filed with FINRA Office of Dispute Resolution an Affidavit stating that he was unable to effect service upon the customer in connection with Occurrence No. [REDACTED]

On or about January 15, 2019, Claimant filed with FINRA Office of Dispute Resolution death records for certain of the customers in connection with Occurrence Nos. [REDACTED] and [REDACTED]. Therefore, Claimant was unable to serve the Statement of Claim upon them.

On or about January 24, 2019, Claimant filed with FINRA Office of Dispute Resolution an Affidavit attesting to service upon the surviving underlying customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] of the Statement of Claim in this matter.

On or about February 1, 2019, Claimant filed with FINRA Office of Dispute Resolution an Affidavit attesting that, after reasonable efforts, he was unsuccessful at obtaining copies of the Settlement Agreements entered in connection with Occurrence Nos. [REDACTED], [REDACTED] and [REDACTED].

On or about February 8, 2019, Claimants filed with FINRA Office of Dispute Resolution proof of service of a follow up letter to the surviving customers in connection with Occurrence Nos. [REDACTED] and [REDACTED] advising of the time change for the upcoming expungement hearing and of their right to participate therein.

On or about February 12, 2019, Claimant filed with FINRA Office of Dispute Resolution an Affidavit attesting to service of the time change for the upcoming expungement hearing upon the surviving customers in connection with Occurrence Nos. [REDACTED] and [REDACTED].

The Arbitrator conducted a recorded telephonic hearing on February 13, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement.

None of the customers participated in the expungement hearing and they did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator did not review the settlement agreements because Claimant was unable to obtain copies. Claimant represented that two of the three settlements were nominal amounts, the largest settlement was paid completely by Claimant's employer, and Claimant was never asked to contribute to any money. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to any of the settlement amounts.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and all pleadings filed.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 No. [REDACTED] Occurrence No. [REDACTED] and Occurrence No. [REDACTED] from registration records maintained by CRD for Claimant (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 Nos. [REDACTED] and [REDACTED]
The claim, allegation, or information is false; and

With respect to Occurrence No. [REDACTED]
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 No. [REDACTED]

The expungement is based upon the following factors: The organizers of the Polaris LP misrepresented material facts to its investors: specifically to Respondent Prudential.

When Respondent Prudential discovered that it had been misled (and had, in turn, misled the customer), Respondent Prudential accepted all liability for the losses in the customer's account. Respondent Prudential sent a letter to the customer acknowledging that it had passed on misleading information. The letter included a form for the customer to fill out and return and advised the customer that he would be paid. That is what happened.

Claimant had no input into the letter or the form. Further, Claimant was not asked to sign, and did not sign, the settlement agreement with the customers. Claimant was not asked to contribute to the payment to the customer of the settlement amount. Respondent Prudential took responsibility on behalf of all brokers whose customers invested in Polaris LP. Accordingly, the claim, allegation, or information against Claimant is false. This complaint should be expunged.

Occurrence No. [REDACTED]

The Pilgrim Fund was seen as a conservative alternative to CDs by Respondent WSA and Claimant. After investing in the fund, WSA learned that the Pilgrim Fund

was operating outside its parameters. The organizers of the Pilgrim Fund misled WSA and Claimant. As a result, WSA took responsibility to make whole all customers who had invested in the Pilgrim Fund. Respondent WSA prepared the settlement agreement with no input from Claimant; WSA did not ask Claimant to sign the settlement agreement, and WSA did not ask Claimant to contribute to the settlement amount. Accordingly, the claim, allegation, or information is false against Claimant. This complaint should be expunged.

Occurrence No. [REDACTED]

The customers were husband and wife. After the husband died, his son contacted Claimant because the son wanted to transfer all of his mother's assets to the company where he worked, so he could handle the remaining assets. The customers executed a section 1035 exchange of an annuity for a mutual fund. The son demanded that Claimant waive the contingent deferred sale charges ("CDSCs") associated with the exchange. Claimant did not have the authority to waive the charges, and the son filed a complaint. The complaint was legally defective, the son made no showing whatsoever that he had the authority to act on behalf of his mother. Moreover, the son wasn't in privity with either Claimant or Respondent Prudential. As a result, Respondent Prudential owed no duty to the son, and by extension, Claimant owed no duty to the son. The son's complaint was a pretext to bully Prudential and Claimant into waiving the transfer fee. Respondent Prudential made a business decision to settle the complaint for its nuisance value. Claimant did not participate in the negotiations, did not sign the settlement agreement, and Claimant did not contribute to the settlement amount. Accordingly, the claim, allegation, or information is factually impossible or clearly erroneous. The complaint should be expunged.

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 parties, Respondent Prudential and Respondent WSA are assessed the following:

<u>Prudential</u>	
Member Surcharge	= \$150.00

WSA

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: November 30, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: February 13, 2019 1 session

Total Hearing Session Fees = \$100.00

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

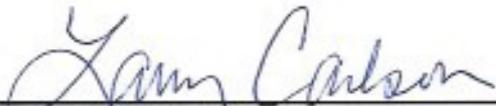
Larry Evert Carlson

-

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



Larry Evert Carlson
Sole Public Arbitrator

April 5, 2019
Signature Date

4/5/2019

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