

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

HD Vest Investment Services

Hearing Site: Nashville, Tennessee

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Erica Harris, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent HD Vest Investment Services (“Respondent”): Eric J. Chartan, Esq., HD Vest Financial Services, Irving, Texas.

CASE INFORMATION

Statement of Claim filed on or about: August 3, 2018.
Claimant signed the Submission Agreement: August 3, 2018.

Statement of Answer filed by Respondent on or about: August 21, 2018.
Respondent signed the Submission Agreement: August 28, 2018.

CASE SUMMARY

Claimant requested expungement of reference to a customer complaint, occurrence number ██████████ (“Underlying Complaint”) from his Central Registration Depository (“CRD”) records.

In the Statement of Answer, Respondent advised that it does not contest Claimant’s request for expungement and stipulates to the expungement of the Underlying Complaint from Claimant’s CRD records.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from his 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 Complaint from his CRD records pursuant to FINRA Rule 2080(b)(1)(B) as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
 3. Expungement of the Underlying Complaint from his CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
 4. An award of compensatory damages in the amount of \$1.00 from Respondent; and,
 5. Any and all other relief that the Arbitrator deems just and equitable.

At 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 November 27, 2018, Respondent provided a waiver of appearance in the initial and final hearing in this matter. Respondent stated that it stands by its position in the Statement of Answer and supports Claimant's expungement request.

On January 2, 2019, Claimant provided a copy of his notice to the customer in the Underlying Complaint ("Customer") regarding the Statement of Claim and notice of the expungement hearing. On January 8, 2019, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the Statement of Claim. On January 22, 2019, Claimant's provided a copy of his follow-up notice to the Customer regarding the expungement hearing. On January 22, 2019, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with notice of the expungement hearing.

On February 4, 2019, the Customer filed his response in opposition to Claimant's expungement request.

The Arbitrator conducted a conference call on February 5, 2019 in connection to Claimant's expungement request. At the call, the Customer requested that the expungement hearing be postponed in order to allow him time to submit additional documents and written submissions. The Customer also requested for documents from Claimant.

By Order dated February 5, 2019, the Arbitrator continued the hearing to March 18, 2019 and ordered Claimant to produce documents to the Customer and ordered the Customer to submit his additional responses to Claimant's expungement request.

On February 26, 2019, the Customer filed his expungement hearing exhibits.

The Arbitrator conducted a recorded telephonic hearing on March 18, 2019 so the parties could present oral argument and evidence on Claimant's expungement request.

Respondent did not appear at the expungement hearing as previously advised in its letter dated November 27, 2018. The Customer appeared at the expungement hearing and opposed Claimant's expungement request.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator determined that the Underlying Complaint was denied (not settled) and therefore there were no settlement agreements to review.

The Arbitrator noted that Claimant did not previously request expungement of the same disclosure from his CRD records.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Claimant's Statement of Claim with exhibits;
- Claimant's Submission Agreement;
- Respondent's Statement of Answer;
- Respondent's Submission Agreement;
- Claimant's Submission of Expungement Hearing Exhibits 2-4;
 - Exhibit 2 – Claimant's Affidavit dated 07-09-18;
 - Exhibit 3 – Customer's Letter of Instruction dated 09-07-09;
 - Exhibit 4 – Customer's Response with attached document dated 06-20-18;
- Respondent's Notice of Waiver of Appearance;
- Claimant's Notice of Service Letter to Customer;
- Claimant's Signed Affidavit of Service to Customer;
- Claimant's BrokerCheck® Report;
- Claimant's Follow-Up Service Letter to Customer;
- Claimant's Signed Affidavit of Follow-Up Service Letter to Customer;
- Customer's Response to Claimant's Expungement Request;
- Customer's Submission of Expungement Hearing Exhibits.

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, 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 the Underlying Complaint, occurrence number [REDACTED] from Claimant [REDACTED] (CRD# [REDACTED] registration records maintained by the CRD, 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 finding of fact:

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.

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

The Underlying Complaint relates to the transferring of funds from two joint accounts to two individual accounts with beneficiaries. In particular, an individual account was set up for the Customer's stepmother ("Ms. JD") with the Customer as the Beneficiary. The signature lines were for Ms. JD, the Customer and his sister.

The Customer alleged in the Underlying Complaint that the signature on the document at issue was not his signature. At the expungement hearing, the Customer further alleged that the signature of Ms. JD, the actual account holder, was incorrect as it was missing the middle initial. The Customer testified that Ms. JD always signed her name with the middle initial. The Customer did not submit any expert witness testimony as to the handwriting. His only evidence was a document he entitled Exhibit 5 containing a document with "Examples of True Signatures" and an e-mail from his sister stating: "When was this done? That's not my signature either." The Customer admitted that he has no evidence, but that he felt something is not right.

Claimant testified that the document at issue was given to Ms. JD for her to obtain the signatures. Claimant stated that he did not handle paperwork in his office and was not familiar with the Customer's signature. Claimant submitted an Affidavit (Exhibit 2) wherein he stated that: he did not forge the signature of anyone, including the Customer's; he did not prepare the document; his staff gave it to Ms. JD to complete; and it was returned with the signatures. Claimant further stated that the document saved the Customer a significant amount of taxes and was to the Customer's benefit. Claimant stated that he always acted as instructed by his client, Ms. JD and always to her benefit. His opinion was that the Customer was unhappy with how Ms. JD arranged her accounts.

Finally, Respondent investigated the Underlying Complaint and denied it, finding that it lacked credibility. Respondent did not contest the present action and stipulates to expungement of the Underlying Complaint.

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	= \$ 100.00
Pre-hearing conferences: November 21, 2018	1 session
February 5, 2019	1 session
One (1) Hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: March 18, 2019	1 session

Total Hearing Session Fees	= \$ 150.00
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The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Michael J. Ahlstrom

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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

 3-28-19
Michael J. Ahlstrom
Sole Public Arbitrator

Signature Date

March 28, 2019

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