

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: Boston, Massachusetts

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████: Dochter Kennedy, MBA, JD, and Joshua Jones, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: June 29, 2018.

Claimant signed the Submission Agreement: June 29, 2018.

Statement of Answer filed by Respondent on or about: August 28, 2018

Respondent signed the Submission Agreement: August 28, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00, expungement, any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested the dismissal of any damages and did not oppose the request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded telephonic hearing on January 15, 2019 so the parties could present oral argument and evidence on [REDACTED] request for expungement. At the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

Respondent participated in the expungement hearing and did not contest Claimant's request for expungement.

The Claimant provided proof that he notified the customers of the expungement request and of their right to participate and testify at the expungement hearing and served the customers with the Statement of Claim. The Claimant provided proof that he was unable to serve the customers for occurrence numbers [REDACTED] and [REDACTED] because they were deceased.

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

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents for occurrence number [REDACTED], considered the amount of payments made to the customer, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim and the additional hearing exhibits.

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 occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("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, 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:

The complaint alleged unauthorized trades. [REDACTED] testified that this was a non-discretionary account and that trading was authorized and no unauthorized trades occurred in this account. In addition, it was not the customer who filed the complaint but a relative with power of attorney. This case was settled and the documents were reviewed. The claim of "unauthorized trades", is factually impossible or clearly erroneous or the information is false and meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement.

2. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("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, 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:

[REDACTED] was alleged to have made “unauthorized trades and unsuitable investments”. [REDACTED] again testified that this was a non-discretionary account and trading was authorized and no unauthorized trades occurred in this account. This case was not settled and the customer took no further actions. The claim of “unauthorized trades and unsuitable investments”, is factually impossible or clearly erroneous or the information is false and meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement.

3. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository (“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, 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:

[REDACTED] was alleged to have made “misrepresentations”. [REDACTED] testified that this was a discretionary account, however [REDACTED] was not involved with this recommendation that the customer is complaining about nor was he present at the time when the Rampart Strategy was recommended by the other broker to the Customer. This case was not settled and the customer took no further actions. The claim of “misrepresentations”, is factually impossible or clearly erroneous or the information is false and meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement.

4. The Arbitrator recommends the expungement of all references to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("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, the Arbitrator has made the following Rule 2080 affirmative findings 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; and the claim, allegation, or information is false.

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

[REDACTED] was alleged to have made "unauthorized trading, excessive trading and unsuitable investment recommendations". [REDACTED] again testified that this was a discretionary account and that trading was authorized. [REDACTED] never met or spoke to the customer but was on the same team as the Broker who dealt with the customer. He was never the customer's financial advisor. This case was not settled and the customer took no further actions. The claim of "excessive trading and unsuitable investment recommendations", is factually impossible or clearly erroneous and meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement. In addition, this occurrence meets FINRA Rule 2080(b)(1)(B) as he was not involved with this customer or matters related to the customer.

5. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Merrill Lynch, Pierce, Fenner & Smith Inc. 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, including a pre-hearing conference with the arbitrator, 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: October 19, 2018	1 session	

One (1) hearing session on expungement request @ \$50.00/session	=	\$ 50.00
Hearing Date: January 15, 2019	1 session	

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

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

ARBITRATOR

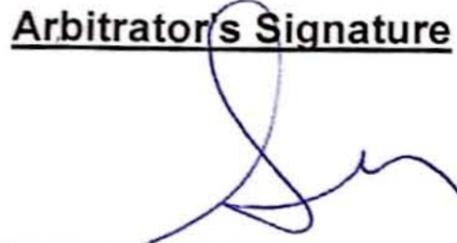
Susan E. Maloney

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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



Susan E. Maloney
Sole Public Arbitrator

1/25/19
Signature Date

January 25, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)