

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent
AXA Advisors, LLC

Hearing Site: Houston, Texas

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Doctor Kennedy, Esq. and Harris Freedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent AXA Advisors, LLC ("Respondent"): Eileen Stassa, Esq., AXA Equitable, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 26, 2018.
Amended Statement of Claim filed on or about: June 6, 2018.
Claimant signed the Submission Agreement: April 25, 2018.

Statement of Answer to Amended Statement of Claim filed on or about: July 26, 2018.
Respondent did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of three customer complaints from his registration records maintained by the Central Registration Depository ("CRD").

In the Amended Statement of Claim, Claimant asserted a claim seeking expungement of two customer complaints from his registration records maintained by the CRD.

In the Statement of Answer to Amended Statement of Claim, Respondent did not take a position with respect to Claimant's request for expungement and denied any wrongdoing or other culpability for any act or omission related to this matter.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers

[REDACTED], [REDACTED], and [REDACTED] from his CRD records, an award of compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and appropriate.

In the Amended Statement of Claim, Claimant requested expungement of Occurrence Numbers [REDACTED] and [REDACTED] from his CRD records, an award of compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and appropriate.

In the Statement of Answer to Amended Statement of Claim, Respondent requested that it be awarded the costs of this proceeding and that the Arbitrator's fees be assessed entirely against Claimant.

On the record at the hearing, Claimant withdrew his request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

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

The Arbitrator did not consider Claimant's request for expungement of Occurrence Number [REDACTED], as it was not asserted in Claimant's Amended Statement of Claim.

On or about October 24, 2018, Claimant submitted a copy of the Amended Statement of Claim, Initial Pre-Hearing Conference Scheduling Order, and notice of the expungement hearing to the customers involved in Occurrence Number [REDACTED] and the customer involved in Occurrence Number [REDACTED]. Further, Claimant advised the customers of the opportunity to participate in the expungement hearing.

Claimant submitted an Affidavit of Service to the customers involved in Occurrence Number [REDACTED] and Occurrence Number [REDACTED], dated October 29, 2018.

The customers in Occurrence Number [REDACTED] submitted correspondence on or about November 23, 2018, opposing Claimant's request for expungement ("Customers' Correspondence").

The Arbitrator conducted a recorded, telephonic hearing on December 3, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing but did not contest Claimant's request for expungement. The customers involved in Occurrence Number [REDACTED] and Occurrence Number [REDACTED] did not participate in the expungement hearing.

On the record at the hearing, with respect to Occurrence Number [REDACTED], the Arbitrator requested that Claimant submit the 2011 complaint letter the customer filed with Respondent ("Customer Complaint"). Claimant submitted the requested document.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

With respect to Occurrence Number [REDACTED], the Arbitrator reviewed the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator found that the settlement was not conditioned on the customers not opposing the request for expungement. The Arbitrator also found that Claimant did not contribute to the settlement amount.

With respect to Occurrence Number [REDACTED], the Arbitrator reviewed the settlement agreement, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator found that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator found, through testimony during the expungement hearing, that Claimant contributed the amount of the insurance deductible toward the settlement.

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

With respect to Occurrence Number [REDACTED], in recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Customers' Correspondence and Claimant's testimony under oath.

With respect to Occurrence Number [REDACTED], in recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Customer's Complaint, the signed Settlement Agreement between the customer and Respondent, and Claimant's testimony under oath.

AWARD

After considering the pleadings, the testimony, and the 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] and Occurrence Number [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 [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 finding of fact with respect to Occurrence Number [REDACTED] and Occurrence Number [REDACTED]:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

With respect to Occurrence Number [REDACTED], it was proven in the hearing that the former customers did authorize submission of the insurance application when it was submitted and they signed it accordingly.

With respect to Occurrence Number [REDACTED], the customer was informed that she was purchasing a life insurance policy, she signed it accordingly, and she took the necessary medical exam and tests.

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

**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, Respondent is assessed the following:

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: September 6, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: December 3, 2018 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Mark C. Watler

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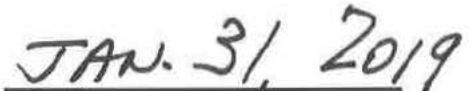
Sole Public Arbitrator

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



Mark C. Watler
Sole Public Arbitrator



Signature Date

01/31/19

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