

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

Raymond James Financial Services, Inc.
WFG Investments, Inc.

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Christopher Cummins, Esq. and Dochter Kennedy, J.D., MBA, AdvisorLaw LLC, Westminster, Colorado.

For Respondent Raymond James Financial Services, Inc. (“Raymond James”): Stanton A. Fears, Esq., Raymond James Financial Services, Inc., St. Petersburg, Florida.

Respondent WFG Investments, Inc. (“WFG”) did not enter an appearance.

Hereinafter, Raymond James and WFG are collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: July 31, 2018.

Claimant signed the Submission Agreement: July 31, 2018.

Statement of Answer filed by Raymond James on or about: August 24, 2018.

Raymond James signed the Submission Agreement: September 19, 2018.

WFG did not file a Statement of Answer and did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two arbitration cases (“Underlying Arbitrations”): an NASD arbitration case, occurrence number ██████████; and a FINRA arbitration case, occurrence number ██████████ from his Central Registration Depository (“CRD”) records.

In its Statement of Answer, Raymond James advised that it does not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Arbitrations from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information was factually impossible or clearly erroneous;
2. Expungement of the Underlying Arbitrations from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information was false;
3. Damages in the amount of \$1.00 from Respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Raymond James did not set forth a specific relief request.

At the hearing, Claimant withdrew his request for \$1.00 in damages from Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

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

WFG 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 is bound by the determination of the Arbitrator on all issues submitted.

On December 6, 2018, Claimant submitted an Affidavit signed by Claimant's counsel advising that Claimant does not have a copy of the settlement agreement in occurrence number [REDACTED] that Claimant was unable to obtain a copy from Raymond James.

On December 17, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on: the customers in occurrence number [REDACTED] ("Mr. and Mrs. H"); and the customer in occurrence number [REDACTED] ("Ms. SP"). Hereinafter, Mr. and Mrs. H and Ms. SP are collectively referred to as "Customers."

On December 20, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Customers were served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on January 28, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Raymond James did not participate in the expungement hearing and, as stated in the Statement of Answer, did not contest the request for expungement.

WFG also did not participate in the expungement hearing. Upon review of the file and the representations made by Claimant, the Arbitrator determined that WFG was not

served with the Statement of Claim but noted that the arbitration would proceed without WFG.

The Customers also did not participate in the expungement hearing. The Arbitrator found that they had notice of the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator reviewed the settlement documents for occurrence number [REDACTED] considered the amount of payments made to any party and found that the settlement amount was low as compared to the claim amount, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Ms. SP not opposing the request for expungement. The Arbitrator also noted that Claimant contributed to the settlement amount. Claimant testified that WFG asked him about resolving the claim and stated that they would pay the settlement. Afterwards WFG took the settlement amount from Claimant's commission check. The Arbitrator found that Claimant's contribution to the settlement amount was not an admission of liability.

The Arbitrator was unable to review the settlement documents for occurrence number [REDACTED] as both Claimant and Raymond James reviewed their records and were unable to locate the settlement documents. The Arbitrator found that Claimant made sufficient efforts to produce the settlement agreement but was unable to do so. The Arbitrator further noted that in light of the affidavit of the attorney for Mr. and Mrs. H which was provided as an exhibit and stated that Claimant was not involved in the disputed transaction, the settlement documents were unlikely to reflect any information related to Claimant's involvement or lack thereof.

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:

- As to occurrence number [REDACTED], Claimant's testimony and Exhibit 5, the affidavit of the attorney who represented Mr. and Mrs. H in their arbitration case and stated that Claimant was not involved in the disputed transaction; and
- As to occurrence number [REDACTED], Claimant's testimony and Exhibit 1, Claimant's BrokerCheck® Report and CRD Snapshot, Exhibit 6, WFG's Answer to the Statement of Claim and Counterclaim filed in the underlying arbitration between Ms. SP and WFG; and Exhibit 7, Ms. SP's Statement of Claim filed in the underlying arbitration between Ms. SP and WFG.

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 Arbitrations, occurrence numbers [REDACTED] and [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.

Occurrence number [REDACTED] (in which Mr. and Mrs. H are the customers)

Pursuant to Rule 13805 of the Code of Arbitration Procedure (“Code”), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

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 findings based on the following reasons:

Mr. and Mrs. H’s complaint was about a transaction that Claimant was not involved in. Mr. and Mrs. H’s attorney signed an affidavit dated December 20, 2005, swearing that “[Claimant], at the time of the annuity switch (that was the basis of his clients’ complaint), was no longer the financial representative of [Mr. and Mrs. H] and, in fact, he had nothing to do with the annuity switch (Exhibit 5).

Further, the attorney stated that if Claimant “... seeks to have an expungement of his record based on the claim of [Mr. and Mrs. H] we would not object to such expungement, and would consent, to the degree we were in a position to do so, to such expungement of [Claimant’s] record” (Exhibit 5).

The transaction that formed the basis for Mr. and Mrs. H’s complaint was made at the recommendation of a different financial advisor, not Claimant, and he took no part in it. In fact, when the transaction took place, in February 2003, Claimant had already transferred his registration from Raymond James to Associated Securities Corp. while Mr. and Mrs. H remained with Raymond James.

Clearly, Claimant “was not involved in the alleged investment-related sales practice violation ...” Pursuant to Rule 2080(b)(1)(B) this is grounds for expungement. For that reason, the other grounds for expungement need not be discussed or enumerated.

Occurrence number [REDACTED] (in which Ms. SP was the customer)

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 claim, allegation, or information is false.

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

Claimant met Ms. SP and her stepmother, Mrs. AP, in May 2003 at an estate planning seminar he hosted (Exhibit 6). Ms. SP was a caregiver and financial manager of Mrs. AP. Mrs. AP was a sophisticated and experienced investor and Ms. SP co-managed her finances. Ms. SP and Mrs. AP met with Claimant in an effort to jointly manage the assets. They both expressed an aversion to paying taxes and wanted to increase income for Mrs. AP from her eligible assets (Statement of Claim, page 11, Exhibit 6).

Mrs. AP resigned as trustee after a health setback, leaving Ms. SP as the sole manager. Ms. SP had years of experience managing the multi-million-dollar estate together with Mrs. AP before this (Exhibit 6).

Over the 6-year association with Ms. SP after Mrs. AP died, Mrs. AP's estate increased by \$1,812,681.00 (Statement of Claim, page 12).

Ms. SP and Mrs. AP historically invested in the energy sector to get intangible drilling costs as tax deductions as well as income. While with Claimant, Ms. SP acquired the Energy Hunter product. She invested \$56,260.00 (4.5% of her portfolio with Claimant) (Statement of Claim, page 14). The Subscription Agreement that Ms. SP signed with Energy Hunter, stated that an investment in an oil and gas drilling program, such as Energy Hunter, was considered speculative and associated with a high degree of risk.

From December 30, 2011, to December 31, 2015, Energy Hunter allocated offsets of \$67,512.00 through K-1 reporting to Ms. SP, meeting her primary objective. It also distributed \$11,936.00 in income (Statement of Claim, page 15).

In 2015, the general partner of Energy Hunter filed for bankruptcy (Exhibit 7). Ms. SP and other partners were offered remedies, including replacing the general partner. Ms. SP took no action. As a result, the assets, which collateralized a loan by the general partner, were open to bidding in a bankruptcy proceeding (Exhibit 6).

On July 20, 2015, it was reported to Claimant's CRD and BrokerCheck® Report that Ms. SP alleged that Claimant had "misrepresented the risks of certain Alternative Investments" (Exhibit 1). Claimant denied the allegations and claim was settled for \$50,000.00 which Claimant was told would be paid by WFG (Testimony of Claimant).

Due to Ms. AP's sophistication and experience as an investor, the large profits made on the bulk of the products that Claimant recommended and the small loss from the risky Hunter Energy Product, it is clear that Claimant did not misrepresent or poorly advise Ms. SP. Ms. SP's claim, therefore, is false, factually impossible, and clearly erroneous meeting both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement.

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, Raymond James is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, WFG is assessed the following:

Member Surcharge	= \$ 150.00
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Postponement Fees

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

January 22, 2019, postponement by Claimant	= \$50.00
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Total Postponements Fees	= \$50.00
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The Arbitrator has assessed \$50.00 of the postponement fees 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: November 28, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: January 28, 2019 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.

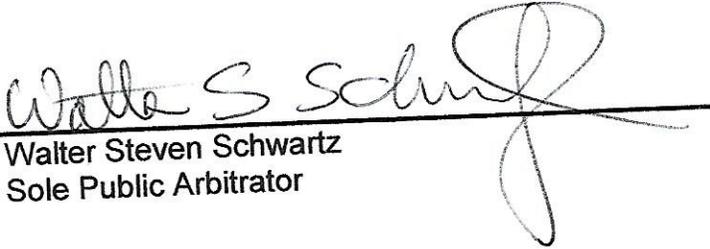
ARBITRATOR

Walter Steven Schwartz

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


Walter Steven Schwartz
Sole Public Arbitrator

2/24/2019
Signature Date

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