

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondent

PNC Investments

Hearing Site: Pittsburgh, Pennsylvania

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ ("Claimant"): Erica Harris, Esq., and Doctor Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent PNC Investments ("Respondent"): Frederic L. Lieberman, Esq., Seyfarth Shaw LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 26, 2018.

Amended Statement of Claim filed on or about: January 24, 2019.

Claimant signed the Submission Agreement: December 21, 2018.

Answer to Amended Statement of Claim filed on or about: March 8, 2019.

Respondent signed the Submission Agreement: January 7, 2019.

CASE SUMMARY

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

In the Answer to the Amended Statement of Claim, Respondent did not oppose Claimant's request for expungement. Unless specifically admitted, Respondent denied the allegations made in the Amended Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of Occurrence Number ██████████ from his CRD records, \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and equitable.

In the Answer to the Amended Statement of Claim, Respondent requested that no relief be awarded against it, that all arbitration fees and costs be assessed against Claimant, and an award of such other relief as is just and proper.

On the record at the 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 or about June 18, 2019, Claimant submitted a copy of the letter sent to the customer related to Occurrence Number [REDACTED] (the "Customer"), which provided the customer with a copy of the Amended Statement of Claim, notice of the expungement hearing date and time, and notice of the opportunity to participate in the expungement hearing.

On or about July 16, 2019, Claimant submitted a copy of the email, dated July 2, 2019, which was sent to the Customer's son, confirming, as discussed by counsel with him, the expungement hearing date and time and the opportunity for him to participate in the expungement hearing. Claimant's submission further identified the Customer's son as being involved in filing his mother's complaint.

The Arbitrator conducted a recorded, telephonic hearing on July 22, 2019, 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 Customer did not participate in the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Claimant not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator noted that Claimant 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: Account records, settlement agreement, and purchase documentation.

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 1899946 from the 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 of Arbitration Procedure ("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:

The Customer became a client of Claimant's in 2008. At that time, she and her husband had invested with Respondent's private wealth management arm. Her expressed intention was to limit her investment risk and diversify her holdings. Her investment objectives were growth and preservation of principal, coupled with a conservative risk tolerance.

From 2008 to 2016, Claimant recommended a variety of risk-free investments, including fixed and fixed-indexed annuities. The total was a very small percentage of the Customer's overall investable assets. The risks and features of these investments were discussed with her in detail, and, upon making these investments, she received and signed all necessary and appropriate investment disclosures and documentation. Claimant reviewed the performance of these investments (which significantly increased in value over time) with her at least monthly. It is apparent from the testimony that the claim and arbitration were not the product of poor investment performance, but rather the Customer's son's belief that, given the long running bull market in equities, the account could have been even more profitable had it not been in concentrated annuities.

Claimant testified that he has not made a prior application for the relief sought herein. He also testified to the adverse impact this disclosure has had on his marketing and business development efforts. The interests of consumer protection and awareness being in no way negatively implicated, the Arbitrator recommends this occurrence be expunged from his CRD.

By reason of the foregoing, the undersigned finds that the requirements of Rule 2080(A) and (C) have been met as the allegations made against Claimant are clearly erroneous, false or both.

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 that employed the associated person at the time of the event 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 @ \$50.00/session	= \$ 50.00
Pre-hearing conference: April 23, 2019	1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: July 22, 2019	1 session

Total Hearing Session Fees	= \$ 100.00
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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

Robert E. Anderson

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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

Robert E. Anderson

Robert E. Anderson
Sole Public Arbitrator

08/13/2019

Signature Date

August 14, 2019

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