

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number: [REDACTED]

vs.

Respondent

Sagepoint Financial, Inc.

Hearing Site: San Diego, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Frances Menzer, J.D., HLBS Law, Westminster, Colorado.

Respondent Sagepoint Financial, Inc. ("Respondent") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: October 29, 2018.
Claimant signed the Submission Agreement: October 29, 2018.

CASE SUMMARY

Claimant requested expungement of a customer complaint, occurrence number [REDACTED] ("Underlying Complaint") from his Central Registration Depository ("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)(C) as the claim, allegation or information is false;
3. An award of compensatory damages in the amount of \$1.00 from Respondent; and,
4. 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.

Respondent did not file a Statement of Answer or an executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code").

The Arbitrator determined that Respondent was served with an Overdue Notice dated January 18, 2019 (including a copy of the Statement of Claim) by regular mail and certified mail, as evidenced by the executed signature card on file. The Arbitrator also determined that Respondent was served the Notification of Arbitration dated February 14, 2019 by regular mail, as well as the Claim Notification Letter dated November 28, 2018, by email.

The Claim Notification Letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent him from submitting pleadings, selecting arbitrators, and receiving notifications relating to case information and deadlines. Although Respondent failed to register for the DR Portal, the Arbitrator determined that Respondent was properly served and is therefore bound by the Arbitrator's ruling and determination.

On April 1, 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 June 5, 2019 expungement hearing. On April 5, 2019, Claimant provided an Affidavit of Service advising that the Customer had been served with the Statement of Claim.

On June 18, 2019, Claimant provided a copy of his notice to the Customer regarding the rescheduled expungement hearing scheduled for July 18, 2019. On July 1, 2019, Claimant provided an Affidavit of Service advising that the Customer had been served with the notice of the expungement hearing.

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

Neither Respondent nor the Customer appeared at the expungement hearing. The Arbitrator found that the Customer was invited to participate in the expungement hearing but did not appear.

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 in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's oral testimony; Claimant's Hearing Exhibit 4 – Respondent's letter dated August 15, 2018 to the Customer; and Claimant's Hearing Exhibit 5 – Customer's May 2016 account statement.

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 [REDACTED] [REDACTED] (CRD# [REDACTED] registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, [REDACTED] [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:

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 finding based on the following reasons:

In the Underlying Complaint, the Customer alleged that on May 16, 2016, Claimant had sold 225 shares of Netflix, Inc. ("Netflix") without the Customer's authorization. This sale, which represented a substantial portion of the Customer's stock portfolio, generated a little more than \$20,000. The allegation that this was an unauthorized transaction was noted in the Underlying Complaint dated May 5, 2018 to Respondent. When the Underlying Complaint was filed, the price of Netflix shares had risen substantially from their price at the time of the sale. Respondent's response dated August 15, 2018, to this letter, states:

“Based on a careful consideration and thorough review of all account documentation, Sagepoint declines your request at this time. Trade confirmations were sent to you and the trades were deemed conclusive in or about June 2016 when the firm did not receive a complaint from you.”

The Customer took no further action.

In order to credit the Customer’s allegation, the Arbitrator would have to believe that the Customer, a lawyer, failed for two years to notice the \$20,000 sale of a substantial portion of his stock portfolio. The Arbitrator does not believe that. Claimant credibly testified that the Customer sparked the sale by requesting a \$20,000 withdrawal from his investments, one of a series of such requests. Claimant further testified that on the day following the allegedly unauthorized transaction: (1) the Customer called to express his unhappiness about the need to sell the 225 shares of Netflix; (2) in response, Claimant offered to reverse the sale and sell some other portion of the Customer’s portfolio; and (3) the Customer declined this offer.

This testimony reinforced my conclusion that the Customer’s allegation of unauthorized trading was false and clearly erroneous.

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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Postponement Fees

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

May 9, 2019, postponement by Claimant

= WAIVED

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: March 22, 2019	1 session

One (1) Hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: July 18, 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

Mark R. Lee

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 R. Lee
Sole Public Arbitrator

7/30/19

Signature Date

July 30, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)