

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Phoenix, Arizona

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent Wells Fargo Clearing Services, LLC (“Respondent”): Judy Louie, Esq., Wells Fargo Legal Department, Pasadena, California.

CASE INFORMATION

Statement of Claim filed on or about: December 20, 2018.

Amended Statement of Claim filed on or about: February 11, 2019.

Claimant signed the Submission Agreement: December 20, 2018.

Statement of Answer filed by Respondent on or about: February 7, 2019.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: March 4, 2019.

Respondent signed the Submission Agreement: February 7, 2019.

Hereinafter, the Statement of Answer and Statement of Answer to Amended Statement of Claim are collectively referred to as “Statements of Answer.”

CASE SUMMARY

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers ██████████ and ██████████ (“Underlying Complaints”), from his Central Registration Depository (“CRD”) records.

In the Amended Statement of Claim, Claimant added additional factual background and exhibits.

In the Statements of Answer, Respondent advised that it has no objection nor opposition to Claimant's request for expungement, so long as it is not required to pay any damages or take any action, and so long as any FINRA fees associated with the expungement hearing are assessed against Claimant.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints 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 Complaints from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of \$1.00 from Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statements of Answer, Respondent did not set forth a specific relief request.

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.

On June 5, 2019, Claimant provided notice that a copy of the Amended Statement of Claim and notice of the expungement hearing had been served on the customer in occurrence number [REDACTED] ("Mr. A") and the customer in occurrence number [REDACTED] ("Mr. R"). Hereinafter, Mr. A and Mr. R are collectively referred to as the "Customers."

On June 17, 2019, Claimant filed an Affidavit of Service, signed by Claimant's counsel, advising that the Customer had been served with copies of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on July 8, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Arbitrator found that Claimant provided notice to the Customers of the expungement request and their right to participate in the expungement hearing but neither responded.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that both Underlying Complaints were denied by the firms (not settled) and therefore there were no settlement documents to review.

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: Amended Statement of Claim and exhibits thereto; and Claimant's testimony at the expungement hearing.

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 Complaints, 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.

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 false.

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

Occurrence number [REDACTED] (in which Mr. A is the underlying customer)

Mr. A invested in mutual funds with Claimant's assistance and Claimant testified that he fully informed Mr. A regarding the penalties and fees associated with the mutual funds. Later, Mr. A directed Claimant to sell these mutual funds (incurring penalty fees) to use the proceeds to buy "hot" tech stocks during the dot-com surge around 2000. Claimant recommended against this because of the risk involved with the tech stocks as well as the penalties Mr. A would incur if he liquidated the mutual fund investments to purchase the tech stocks, but Mr. A insisted and these tech stocks ultimately declined. Accordingly, Mr. A's allegations that Claimant did not inform him of the costs and commissions associated with the mutual funds are false.

Occurrence number [REDACTED] (in which Mr. R is the underlying customer)

Pursuant to Mr. R's low risk tolerance, Claimant recommended and Mr. R invested in an equity-linked note called Morgan Stanley S&P 500 Peeqs. Later, in order to avoid the expected effects of a currency crisis, Claimant recommended that Mr. R move his investment from the Peeqs to an equally suitable Omega Healthcare real estate investment trust ("Omega REIT"). The Omega REIT was an equally suitable investment for Mr. R's low risk tolerance and, at the time, REITs were considered a prudent investment and Omega Healthcare had a good track record. The Omega REIT investment did well for a time and then declined due to market conditions. Accordingly, the Arbitrator found that Claimant's advice that Mr. R invest in the Omega REIT was not erroneous or unsuitable.

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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Discovery-Related Motion Fee

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	= \$200.00
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Claimant submitted 1 discovery-related motion

Total Discovery-Related Motion Fees	= \$200.00
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The Arbitrator has assessed \$200.00 of the discovery-related motion 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: April 12, 2019	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: July 8, 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

Michael Kelley

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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



Michael Kelley
Sole Public Arbitrator

7/16/19

Signature Date

July 16, 2019

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