

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number

██████████

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Indianapolis, Indiana

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Doctor Kennedy, Esq., and Harris Friedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: August 7, 2018.  
Claimant signed the Submission Agreement: August 7, 2018.

Statement of Answer filed by Respondent on or about: October 4, 2018.  
Respondent signed the Submission Agreement: October 4, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaint, Occurrence Numbers ██████████ from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s request for expungement and asserted various affirmative defenses.

**RELIEF REQUESTED**

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

In the Statement of Answer, Respondent objected to Claimant’s request for \$1.00 in

compensatory damages.

On 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 January 4, 2019, in compliance with the Initial Pre-Hearing Conference Order, Claimant filed a copy of the letters sent to the customer and the customer's daughter for Occurrence Number [REDACTED] providing the customer and her daughter with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. On or about January 18, 2019, Claimant filed an Affidavit of Service for the letters sent to the customer and her daughter.

The Arbitrator conducted a recorded, telephonic hearing on February 12, 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 the request for expungement. On behalf of the customer, the customer's daughter participated in the expungement hearing only to clarify the accurate amount of her mother's income listed in the Statement of Claim, however, she left the hearing following this clarification and took no position on expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant 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 found that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator found 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 testimony of Claimant and the customer's daughter.

### **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] 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 finding of fact:

- 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:

Claimant testified that as a result of a market decline in 2008, the customer reviewed her portfolio with Claimant and decided to diversify out of municipal bonds due to her concern that municipalities might default on the bonds. The customer then decided to rebalance her account to include taxable bonds and higher yearly fixed income funds. All purchases were made at her request and direction. The claim that Claimant was involved in excessive trading in the customer’s account is false, clearly erroneous, and factually impossible since all of the trades were made solely at the customer’s direction and request.

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 events 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



**ARBITRATOR**

William M. Getzoff

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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**

/s/ William M. Getzoff

March 28, 2018

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William M. Getzoff  
Sole Public Arbitrator

\_\_\_\_\_  
Signature Date

March 28, 2019

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