

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

RP Capital LLC

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondent RP Capital LLC (“Respondent”): Gary Price, Gig Harbor, Washington.

CASE INFORMATION

Statement of Claim filed on or about: June 4, 2018.

Amended Statement of Claim filed on or about: April 1, 2019.

Claimant signed the Submission Agreement: June 4, 2018.

Statement of Answer filed by Respondent on or about: July 9, 2018.

Respondent did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant requested expungement of three customer disputes, occurrence numbers ██████████ ██████████ and ██████████ (“Underlying Claims”), from his Central Registration Depository (“CRD”) records. Occurrence numbers ██████████ and ██████████ were initially filed as FINRA arbitration cases but were subsequently enjoined into a class-action civil litigation. Occurrence number ██████████ was a case filed in state court and then was enjoined into the class-action civil litigation. In Claimant’s Amended Statement of Claim, he reiterated his request for expungement of the Underlying Claims.

In the Statement of Answer, Respondent did not contest the case and stipulated to the expungement of the Underlying Claims from Claimant’s CRD records.

RELIEF REQUESTED

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

1. Expungement of the Underlying Claims from his CRD records pursuant to:
 - a. FINRA Rule 2080(b)(1)(A) as the claim, allegation, or information is factually impossible or clearly erroneous;
 - b. FINRA Rule 2080(b)(1)(B) as the Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and
 - c. FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
2. Damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent opposed any request for damages.

During the May 17, 2019 expungement hearing, Claimant withdrew his request for damages in the amount of \$1.00 from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file with FINRA Office of Dispute Resolution (“ODR”) a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the Statement of Claim, is bound by the determination of the Arbitrator on all issues submitted.

By letter dated October 26, 2018, Claimant provided copies of his notices to the customers in the Underlying Claims (“Customers”) regarding the Statement of Claim and notice of the November 27, 2018 expungement hearing. By letter dated October 30, Claimant provided copies of his follow-up service letters to the Customers which included a copy of the Initial Prehearing Conference Order.

On November 14, 2018, Claimant provided an Affidavit of Service advising that the Customers had been served with the Statement of Claim.

On November 27, 2018, the Arbitrator conducted a recorded telephonic hearing so the parties could present oral argument and evidence on Claimant’s request for expungement. Respondent did not participate in the hearing and, as previously advised in its Statement of Answer, stipulated to the expungement of the Underlying Claims. None of the Customers participated in the expungement hearing.

After the hearing, it was discovered that Claimant had not named or served all of the customers who were listed in the Underlying Claims. Claimant then filed a declaration stating the names of each of the customers involved in each of his CRD disclosures, and an Amended Statement of Claim including only those customers involved in his expungement request.

By letter dated April 3, Claimant provided copies of his notices to the Customers regarding the Amended Statement of Claim and notice of the May 17, 2019

expungement hearing. Claimant also filed an affidavit of non-service to Mr. M and Ms. K (two customers from occurrence number [REDACTED] advising that he was unable to locate any information relating to them after reviewing all documentation and information in his possession and that Respondent was unable to provide any new information to assist with his search. On April 5, Claimant provided an Affidavit of Service advising that all Customers but Mr. M and Ms. K had been served with the Amended Statement of Claim.

Four customers from occurrence number [REDACTED] (Mr. C, Mr. D, Mrs. B, and Mrs. S) filed objections to Claimant's request for expungement.

The Arbitrator conducted a recorded telephonic hearing on May 17, 2019 so the parties could present additional oral argument and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing and, as previously advised in its Statement of Answer, stipulated to the expungement of the Underlying Claims. At the hearing, Claimant withdrew his request for \$1.00 in damages.

Mrs. B and Mrs. S participated in the May 17 expungement hearing and contested the request for expungement. None of the other Customers participated in the expungement hearing. The Arbitrator determined that the Customers (except for Mr. M and Ms. K) received due notice of the May 17, 2019 expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed the Stipulation of Settlement for the class-action litigation and the court issued Amended Findings of Fact, Conclusions of Law and Order Granting Plaintiffs' Motion for Final Approval of Class Action Settlement, Motion for Award of Attorney Fees, Costs, and Incentive Awards, and Responding Defendants' Request for Permanent Injunction ("Court's Order"). The Arbitrator considered the amount of payments made to the customers in the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any of the Customers not opposing Claimant's request for expungement. The Arbitrator also noted that the total settlement was for \$6,100,000.00; however, after attorneys' fees and other factors, was reduced.

The Arbitrator further noted that in the Court's Order, Claimant, among others, paid a total of \$1,200,000.00 of the settlement. The Arbitrator also reviewed the Settlement Agreement between the insurer and Claimant, among others, and noted that the insurer would pay \$604,707.84 of the \$1,200,000.00. Based on Claimant's Affidavit and testimony, the Arbitrator found that Claimant's insurance company paid \$604,707.84 and he did not contribute to the remaining amount of \$595,292.16. The Arbitrator noted that the amount of the settlement seemed reasonable for a class-action litigation, particularly with a class of 370 members.

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: Claimant's testimony during the expungement hearing.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the November 27, 2018 and May 17, 2019 hearings, and the post-hearing submissions, 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 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 12805 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

All of the evidence presented at the expungement hearing establishes that Claimant never serviced any of these customers' accounts and, in addition, had never even met any of them. Consequently, the Arbitrator finds the allegations are factually impossible, clearly erroneous, and false, and that Claimant was not involved in the alleged investment-related sales practice violation.

2. Claimant's request for expungement of occurrence number [REDACTED] is denied. The Arbitrator noted that four customers objected to Claimant's request for expungement of this occurrence and that Claimant admitted that he was an Investment Advisor for each of these customers. The Arbitrator found the evidence is sufficient to establish that Claimant's recommendation of the Aequitas Note was not suitable for any of these customers.
3. 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

**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

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:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session	=\$ 100.00
Pre-hearing conferences: September 28, 2018	1 session
February 15, 2019	1 session

Two (2) hearing sessions on expungement request @ \$50.00/session	=\$ 100.00
Hearing Dates: November 27, 2018	1 session
May 17, 2019	1 session

Total Hearing Session Fees	=\$ 200.00
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The Arbitrator has assessed \$200.00 of the hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATOR

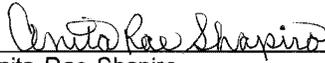
Anita Rae Shapiro

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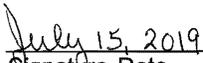
Sole Public Arbitrator

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



Anita Rae Shapiro
Sole Public Arbitrator



Signature Date

July 15, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)