

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondents

Hearing Site: Dallas, Texas

United Pacific Securities, Inc.
National Planning Corporation

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Dochter Kennedy, Esq. and Erica Harris, Esq.,
AdvisorLaw, LLC, Westminster, Colorado.

For Respondent National Planning Corporation ("NPC"): Scott Forbush, Esq., Jackson
National Life Insurance Company, Lansing, Michigan.

Respondent United Pacific Securities, Inc. ("UPS") did not appear.

CASE INFORMATION

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

[REDACTED] signed the Submission Agreement: June 26, 2018.

Statement of Answer filed by Respondent NPC on or about: October 1, 2018.

NPC signed the Submission Agreement: October 2, 2018.

Respondent UPS did not file a Statement of Answer or not sign the Submission
Agreement.

CASE SUMMARY

Claimant asserted the cause of action of inaccurate reporting on his Central
Registration Depository ("CRD") records. The cause of action relates to two previously
settled NASD customer arbitrations involving Respondent UPS (Occurrence Nos.
[REDACTED] and [REDACTED]) and one previously settled FINRA customer arbitration involving
Respondent NPC (Occurrence No. [REDACTED]).

The cause of action in Occurrence Nos. [REDACTED] and [REDACTED] relates to the customers'
investments in the First Fidelity Acceptance Corporation Auto Receivable Trust.

The cause of action in Occurrence No. [REDACTED] relates to a Tenancy in Common ("TIC") -
1031 exchange.

In its Statement of Answer, Respondent NPC did not take a position on Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence Nos. [REDACTED] and [REDACTED] from his CRD records; compensatory damages in the amount of \$1.00; and such other relief deemed just and equitable.

In its Statement of Answer, Respondent NPC requested denial of Claimant's request for any monetary relief and assessment of all fees and costs associated with this proceeding against Claimant.

At the conclusion of the expungement hearing, Claimant withdrew his request for compensatory damages in the amount of \$1.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about September 19, 2018, Claimant filed a Motion to Change Hearing Location from San Diego, California to Dallas, Texas, to which no response was filed. On or about November 8, 2018, the Arbitrator issued an Order that granted Claimant's Motion.

Respondent UPS did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

On or about December 7, 2018, Claimant filed a notice of death certificate for the underlying customers in connection with Occurrence No. [REDACTED]. Accordingly, Claimant did not provide notice to these customers because they are deceased.

On or about December 7, 2018, Claimant filed a proof of service of the Statement of Claim upon the underlying customers in Occurrence Nos. [REDACTED] and [REDACTED] together with notice of the date and time of the hearing and of their right to participate therein.

On or about December 10, 2018, Claimant filed an Affidavit regarding service of the Statement of Claim upon the underlying customers in Occurrence Nos. [REDACTED] and [REDACTED].

The Arbitrator conducted a recorded telephonic hearing on January 7, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement. Neither Respondents nor any of the underlying customers participated in the expungement hearing and no objections were filed.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement document in connection with Occurrence No. [REDACTED] 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 the customer in connection with Occurrence No. [REDACTED] not opposing the request for expungement and that Claimant did not contribute to the settlement amount.

Notwithstanding his request, the Arbitrator was not provided with a copy of the settlement agreements in connection with Occurrence Nos. [REDACTED] and [REDACTED].

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement of Occurrence No. [REDACTED] the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and Respondent NPC's Statement of Answer.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded telephonic hearing, and the post-hearing submissions (if any), 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 No. [REDACTED] from registration records maintained by the CRD for Claimant (CRD # [REDACTED]) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 with respect to Occurrence No. [REDACTED]

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:

- The underlying customer did not name Claimant in her arbitration or blame him for her losses.
- The underlying customer was sophisticated, wealthy and experienced in real estate, securities and business entities. The evidence presented in 22+ documents disclosed that substantial due diligence was undertaken by Claimant and Respondent NPC, and that the customer reviewed the documentation before investing.

- After selling a large property for more than \$2,000,000.00, the underlying customer was immediately concerned about how to avoid a substantial capital gains tax. She was experienced in real estate, owning other properties and was familiar with the requirements of IRS Section 1031, dealing with tax savings through property exchanges. She carefully reviewed all of the documentation but still relied on her CPA to help her select appropriate exchange properties. With his guidance and the many due diligence documents provided by Claimant and Respondent NPC, she purchased a TIC property in St. Louis known as Behringer Harvard. She and her CPA selected Behringer with a \$500,000.00 investment and a second property with a \$600,000.00 investment. The 1031 exchange saved her approximately \$300,000.00. The second selected property continued to perform well, but the Behringer property did not survive the 2008 financial collapse.
 - The underlying customer filed an arbitration against Respondent NPC through FINRA claiming misrepresentation, lack of supervision and deceptive practices solely against Respondent NPC. She settled her claim against Respondent NPC for a fraction of what she requested. Claimant did not participate in the settlement, contribute to it or make any conditions concerning it.
 - Neither the evidence nor testimony supported the underlying customer's allegations of misrepresentation, failure of supervision and other stated failures by Claimant or Respondent NPC. The underlying customer was an experienced, capable person who knew her mind and did not appear to be influenced by either Claimant or Respondent NPC. Before making a purchase, she sought additional guidance from her CPA and others and was even willing to exceed the 20% net worth percentage limitations required by Respondent NPC. The settlement was modest considering her loss, and did not require payments to anyone. The only caveat is the admitted pressure to settle put on Respondent NPC by Claimant out of fear of what might appear on his CRD records.
 - Based on the foregoing, the underlying customer's claim is erroneous and should be expunged from Claimant's CRD records.
2. Claimant's request for a recommendation of expungement regarding Occurrence Nos. [REDACTED] and [REDACTED] is denied.
 3. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to, 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, named Respondents NPC and UPS are each assessed the following:

NPC
Member Surcharge = \$150.00

UPS
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:

One (1) pre-hearing session with the Arbitrator @ \$50.00/session = \$ 50.00
Pre-hearing conference: November 8, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: January 7, 2019 1 session

Total Hearing Session Fees = \$100.00

The Arbitrator has assessed the total hearing session fees of \$100.00 to Claimant.

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

