

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number ██████████

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Michelle Atlas, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Randi Perry Spallina, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: March 28, 2018.
Claimant signed the Submission Agreement: March 28, 2018.

Statement of Answer filed by Respondent on or about: June 28, 2018.
Respondent signed the Submission Agreement: July 9, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two customer disputes (“Underlying Claims”): a customer complaint, occurrence number ██████████; and an NASD arbitration case, occurrence number ██████████ from his Central Registration Depository (“CRD”) records.

Unless specifically admitted in the Statement of Answer, Respondent advised that it takes no position as to Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claims from his CRD records pursuant to FINRA

- Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous; and,
2. Expungement of the Underlying Claims 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.
 4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested Claimant be precluded from an award of damages.

During 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.

On October 9, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on Ms. B, one of the customers in occurrence number [REDACTED]

On October 16, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that Ms. B had been served with the Statement of Claim by certified mail. The Affidavit also advised that Mr. W, the other customer in occurrence number [REDACTED] was deceased and unable to be served. Claimant also submitted the Lexis Nexis Death Record for Mr. W as well as his obituary.

Hereinafter, Ms. B and Mr. W are referred to as the "Customers."

On November 8, 2018, FINRA Office of Dispute Resolution ("ODR") advised the parties and the Arbitrator that the Director of FINRA ODR determined that Claimant's request for expungement of occurrence number [REDACTED] is not eligible for arbitration as it arises from a prior adverse award. Accordingly, pursuant to Rule 13203(a) of the Code of Arbitration Procedure ("Code"), the forum was denied as to occurrence number [REDACTED]. The letter further advised that the case would proceed as to occurrence number [REDACTED]. As a result, the Arbitrator notes that this award only addresses the request for expungement for occurrence number [REDACTED]

On November 13, 2018, Claimant submitted the USPS Tracking Information advising that Ms. B had been served by certified mail.

The Arbitrator conducted a recorded telephonic hearing on November 13, 2018, 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.

Ms. B did not appear at the expungement hearing. The Arbitrator found that Ms. B was notified with a copy of the Statement of Claim and given the opportunity to provide oral

or written testimony at the expungement hearing. The Arbitrator noted that no response or testimony (oral or written) was received from Ms. B.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that occurrence number [REDACTED] was 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 disclosure in the CRD.

In recommending expungement of occurrence number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; BrokerCheck® Report; Claimant's testimony; and the Customers' account application.

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 occurrence number [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 factually impossible or clearly erroneous.

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

The evidence clearly proved that the Customers' claim of unsuitable trading was clearly erroneous and false. After filing the complaint, Respondent investigated the allegation and concluded that the allegation was without merit. No further action was taken by the Customers.

The Customers (husband and wife) were in their 70s and retired during the time of the alleged unsuitable trading and their portfolio was designed to protect their principal. The evidence presented during the expungement hearing revealed that their complaint was an expression of frustration that their purposely designed conservative portfolio was not growing at the rate of more risky “tech” investments at the time.

No evidence was provided that Claimant recommended unsuitable investments. The Customers never filed any further complaints after Respondent’s investigation into their allegations and finding the complaint meritless.

Finally, clearly Claimant did not perform any actions that amounted to “unsuitable trading.” The evidence provided before and during the hearing indicated that the Customers’ investment portfolio did not reduce in value during the time in question but actually increased over time. Therefore, the Customers’ suffered no loss.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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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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: July 16, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 13, 2018	1 session

Total Hearing Session Fees =\$100.00

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

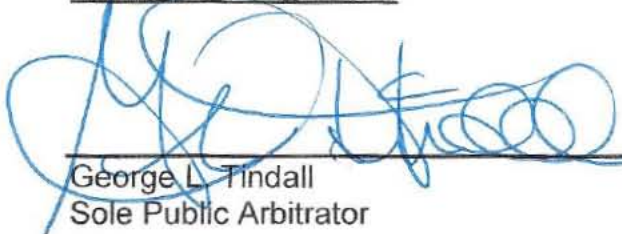
George L. Tindall

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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



George L. Tindall
Sole Public Arbitrator

12/13/2018

Signature Date

December 13, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)