

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Ameriprise Financial Services, Inc.

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochtor Kennedy, Esq., and Michael Bessette, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Ameriprise Financial Services, Inc.: Howard Klausmeier, Esq., Ameriprise Financial Services, Inc., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: February 26, 2018.  
Claimant signed the Submission Agreement: February 26, 2018.

Statement of Answer filed by Respondent on or about: April 19, 2018.  
Respondent signed the Submission Agreement: April 19, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

In the Statement of Answer, Respondent did not oppose the expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00, expungement of occurrence numbers [REDACTED], [REDACTED], and [REDACTED] from his CRD record, and any and all relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested a recommendation for expungement, a denial of all requested damages, and an assessment of all fees and costs against the Claimant.

At the close of the hearing, Claimant requested withdrawal of 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.

The Arbitrator conducted a recorded telephonic hearing on December 17, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Claimant provided proof that he notified the living customers of the expungement request and of their right to participate and testify at the expungement hearing and served the customers with the Statement of Claim. Service could not be perfected on one deceased customer.

The customers did not participate in the expungement hearing and did not contest the request for expungement.

In making a determination to recommend expungement, the Arbitrator relied on sworn testimony of Claimant and Respondent's counsel, and the information in Claimant's BrokerCheck® Report. The Arbitrator reviewed the BrokerCheck® Report for [REDACTED], [REDACTED], considered the amount of payments made to the customers, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amounts. Respondent did reach settlements with the customers. The settlement documents were not available for the Arbitrator's review because Respondent has a six-year documentation retention policy, and these settlements were entered into long ago.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Claimant's U4 and U5, testimony of Claimant, and the testimony of Respondent's counsel.

## 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 Central Registration Depository ("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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

Claimant was accused primarily of unsuitable investments. In this complaint, although the customer lost money, Claimant's recommendation outperformed the market.

2. The Arbitrator recommends the expungement of all references to occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by the Central Registration Depository ("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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

The customer invested just before the market declined overall. In both cases, Claimant held several meetings with the customers and presented the risks and rewards of the investments, and in neither case was the investment remotely unsuitable. Settlements were made by Respondent's predecessor-in-interest, but Claimant was not involved in either the settlement terms or paying any part of the settlement.

3. 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Ameriprise Financial Services, Inc. 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, including a pre-hearing conference with the arbitrator, 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: June 6, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: December 17, 2018	1 session

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Total Hearing Session Fees = \$100.00

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

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

**ARBITRATOR**

Richard W. Cutler

Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**



Richard W. Cutler  
Sole Public Arbitrator

1/25/2019

Signature Date

**January 28, 2019**

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