

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

TFS Securities, Inc.

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Dochter Kennedy, MBA, J.D., and Frances Menzer, AdvisorLaw, LLC, Westminster, Colorado.

For Respondent TFS Securities, Inc.: Tammy S. Case, TFS Securities, Inc., Lincroft, New Jersey.

**CASE INFORMATION**

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

Amended Statement of Claim filed on or about: February 11, 2019.

████████████████████ signed the Submission Agreement: December 21, 2018.

Statement of Answer filed by Respondent on or about: January 15, 2019.

Statement of Answer to Claimant's Amended Statement of Claim filed by Respondent on or about: March 11, 2019.

TFS Securities, Inc. signed the Submission Agreement: January 16, 2019.

**CASE SUMMARY**

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

In the Statement of Answer and the Answer to Amended Statement of Claim, Respondent stated that it did not oppose Claimant's request for expungement.

### **RELIEF REQUESTED**

In the Statement of Claim and the Amended Statement of Claim, Claimant requested expungement; \$1.00 in compensatory damages; and any and all other relief the Arbitrator deems just and right.

In the Statement of Answer and the Answer to Amended Statement of Claim, Respondent requested that Claimant's request for damages be denied.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

Claimant's amendment filed on February 11, 2019 added more detail to the Statement of Claim.

On March 29, 2019, Claimant stated that the customer in the underlying complaint was served with the Statement of Claim. On March 29, 2019, Claimant advised the Customer she may participate in the expungement hearing and gave notice of the date and time of the hearing.

The Arbitrator conducted a recorded telephonic hearing on May 15, 2019 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

During the May 15, 2019 hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

TFS Securities, Inc. participated in the expungement hearing but did not contest the request for expungement.

The customer did not participate in the expungement hearing and did not contest the request for expungement. The Arbitrator found that she was given proper notice of the hearing date and time.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, considered the amount of payments made to the customer, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement.

The Arbitrator also noted that [REDACTED] contributed to the settlement amount. When considering the amount of payments, the Arbitrator stated that the Claimant contributed an amount out-of-pocket as the deductible amount of his Errors and Omissions insurance, which paid the rest of the settlement amount, to avoid further legal fees and costs in arbitration. The customer did not agree to not oppose expungement in the terms of the Release Agreement. The Arbitrator did not consider the payment by Claimant as significant as to liability, but as a business decision.

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: oral testimony of Claimant; and Claimant's Exhibits 9, 10, 11, 12, 13 and 14.

### **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 the Occurrence Number [REDACTED] from registration records maintained by the Central Registration Depository, 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 findings 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:

In February 2001, the customer had a Templeton Fund account valued at approximately \$150,000.00 with Respondent TFS Securities, Inc. The customer had other accounts with other brokers and a liquid net worth of approximately \$750,000.00. Claimant [REDACTED] was assigned as her Financial Advisor.

In April 2001, for purposes of diversification and long term distribution, upon Claimant's recommendation, the customer agreed to transfer \$100,000.00 to purchase a US Allianz annuity with a 5% guaranteed death benefit. The customer had discussions with Claimant before and after the purchase. The customer signed the documents which clearly stated the \$100,000.00 investment and received documents which clearly stated the \$100,000.00 investment with no objections.

In 2002, after the value of the annuity had fallen, the customer made an oral complaint that only \$40,000.00 was intended to be invested and that Claimant had not followed her instructions when investing \$100,000.00 in the annuity. Respondent

denied the oral complaint in March, 2002. Thereafter, in June, 2003, the customer filed a Statement of Claim in arbitration with the NASD, seeking damages of \$18,000.00. This arbitration claim was settled on May 30, 2004, by the signing of a Release (EX 14) and the payment of the settlement amount by Claimant. The decision to settle was a purely business decision with no admission of wrongdoing. The claim by the customer was clearly erroneous since in 2001, at the time of the actual transaction, the customer signed or received four different documents (EX 9-12) which expressly stated the amount of the transaction, transfer, and purchase of the annuity in question was \$100,000.00 not \$40,000.00

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent TFS Securities, 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: March 11, 2019	1 session

One (1) hearing session @ \$50.00/session	= \$ 50.00
Hearing Date: May 15, 2019	1 session

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Total Hearing Session Fees	= \$ 100.00
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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**

Guillermo L. Bosch

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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**



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Guillermo L. Bosch  
Sole Public Arbitrator

May 24, 2019  
Signature Date

May 28, 2019

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