

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: San Francisco, 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”): Patrick J.
Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on: November 20, 2018.

Claimant signed the Submission Agreement: November 20, 2018.

Statement of Answer filed by Respondent on: January 18, 2019.

Respondent signed the Submission Agreement: January 18, 2019.

CASE SUMMARY

Claimant requested expungement of a customer complaint, occurrence number
██████████ (“Underlying Complaint”) from her Central Registration Depository (“CRD”)
records.

In the Statement of Answer, Respondent advised that it takes no position on Claimant’s
request for expungement but objects to Claimant’s request for compensatory damages
and provided further affirmative and other defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from her CRD records pursuant to
FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually

- impossible or clearly erroneous;
2. Expungement of the Underlying Complaint from her CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
 3. An award of compensatory damages in the amount of \$1.00 from Respondent; and,
 4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not set forth a relief request.

At 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 April 3, 2019, Claimant provided a copy of her notice to the customer in the Underlying Complaint ("Customer") regarding the Statement of Claim and notice of the expungement hearing. On April 5, 2019, Claimant provided an Affidavit of Service signed by Claimant's counsel advising that the Customer had been served with the Statement of Claim.

On April 9, 2019, Claimant's counsel filed an email response sent to them by the Customer in opposition to Claimant's expungement request ("Customer's Opposition").

The Arbitrator conducted a recorded telephonic hearing on April 30, 2019 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. The Customer did not appear at the expungement hearing. The Arbitrator found that the Customer was invited to participate in the expungement hearing but did not appear.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator reviewed the settlement documents from the Underlying Complaint and considered the amount of payments made to any party and any other terms and conditions of settlement. The Arbitrator determined that the Underlying Complaint was settled to avoid the costs of further proceedings. The Arbitrator determined that Claimant was not a party to the settlement and did not contribute to the settlement amount. The Arbitrator further determined that the settlement agreement was not conditioned upon the Customer's agreement not to oppose expungement.

The Arbitrator noted that Claimant did not previously request expungement of the Underlying Complaint from his CRD records.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence:

- Claimant's oral testimony;
- Claimant's Hearing Exhibit 3: 2009-12-10 Letter from Respondent to Customer Re: Sun Life Contract Ending in 4997 ("Respondent's 2009 Letter"); and
- Customer's Opposition.

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 the Underlying Arbitration, occurrence number [REDACTED] from Claimant [REDACTED] (CRD# [REDACTED] registration records maintained by the CRD, 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 finding of fact:

The claim, allegation, or information is false.

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

Claimant's sworn testimony established that the Customer's complaint regarding fees, made over nine years ago, was false and erroneous as Claimant testified that both she and a fellow broker on the Customer's account fully explained to the Customer, the costs, fees and benefits associated with the annuity. Claimant also testified that the Customer seemed to understand the fees. Additionally, the documents from the annuity provider in October 2009 also fully explained the operations of the annuity.

No contrary sworn testimony was presented at the hearing, although the Customer was notified of the hearing and invited to participate. The Arbitrator was not persuaded by the Customer's Opposition as it was not sworn testimony.

Further, the Arbitrator found that the Customer made an additional allegation in his opposition that he did not authorize the purchase of the

annuity, an allegation that was not part of the Underlying Complaint. The Arbitrator noted that this allegation was contradicted by the Customer's acceptance of one of the alternatives to the annuity presented in Respondent's 2009 Letter which resolved the Underlying Complaint. The Arbitrator found that the Customer's acceptance of this alternative demonstrated that he must have accepted and agreed to the annuity investment in the first place.

The Arbitrator found that Respondent's 2009 Letter attempted to address the Customer's concerns and referred to a phone conversation with the Customer which outlined the basis for the fees charged (and not charged), taxes and qualifications for a hardship withdrawal. The letter noted the resolutions offered over the phone and responded to the Customer's emails regarding his unhappiness with the annual asset charges of 1.7% by the annuity provider and his refusal to sign the annuity confirmation of receipt.

Respondent's 2009 Letter also set forth three alternatives to remedy the Customer's concerns and confirmed that the Customer opted for Option 3 over the phone. Claimant's testimony further established that Option 3 was executed. The Arbitrator found that the Customer, by accepting Option 3 which terminated the existing contract, it followed that the Customer did enter into the annuity knowingly.

2. 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
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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: March 19, 2019 1 session	
One (1) Hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: April 30, 2019 1 session	
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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

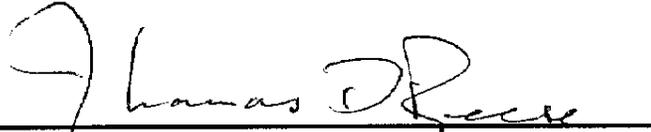
Thomas D. Reese

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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



Thomas D. Reese
Sole Public Arbitrator

5/28/19

Signature Date

May 28, 2019

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