

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

Valic Financial Advisors, Inc.
Brecek & Young Advisors, Inc.
Securities America, Inc.

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████: Owen Harnett, Esq., HLBS Law, Westminster, Colorado and Dochter Kennedy, Esq., AdvisorLaw LLC, Broomfield, Colorado.

Respondent Brecek & Young Advisors, Inc. did not appear.

For Respondent Securities America, Inc. ("SA"): Chad Weaver, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

For Respondent Valic Financial Advisors, Inc. ("Valic"): Cora E. MacLean, Esq., McElroy, Deutsch, Mulvaney & Carpenter, LLP, Morristown, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: May 3, 2018.

Claimant signed the Submission Agreement: May 3, 2018.

Amended Statement of Claim filed on or about: June 6, 2018.

Claimant signed the Amended Submission Agreement: June 6, 2018.

Answer and Defenses to Amended Statement of Claim filed by Respondent Valic on or about: June 18, 2018.

Respondent Valic signed the Submission Agreement: June 18, 2018.

Answer to the Amended Statement of Claim filed by Respondent SA on or about: July 26, 2018.

Respondent SA signed the Submission Agreement: August 17, 2018.

Brecek & Young Advisors, Inc. did not file a Statement of Answer or 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 a previously settled customer litigation in the Superior Court of the State of California in Placer County, California (Occurrence No. [REDACTED]) as well as a previously settled FINRA arbitration (Case No. [REDACTED]/Occurrence No. [REDACTED]).

The cause of action in Occurrence No. [REDACTED] relates to the customer's purchase of a variable annuity.

The cause of action in Occurrence No. [REDACTED] relates to the customer's investment in a real estate investment trust ("REIT") sponsored by Diversified Business Services and Investments ("DBSI").

In its Answer and Defenses to the Amended Statement of Claim, Respondent Valic did not take a position as to Claimant's expungement request relating to Occurrence No. [REDACTED]. Additionally, unless specifically admitted, Respondent Valic denied the allegations made in the Amended Statement of Claim and asserted various defenses.

In its Answer to the Amended Statement of Claim, Respondent SA stated that it does not oppose Claimant's expungement request relating to Occurrence No. [REDACTED].

RELIEF REQUESTED

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

In its Answer and Defenses to the Amended Statement of Claim, Respondent Valic requested denial of any claims, damages or other consideration.

In its Answer to the Amended Statement of Claim, Respondent SA requested denial of Claimant's request for an award of damages.

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.

Claimant filed an Amended Statement of Claim in which Claimant replaced Brecek & Young Advisors, Inc. with Securities America, Inc. (f/k/a Brecek & Young Advisors, Inc.) as a Respondent in this matter.

On or about October 4, 2018, Claimant filed with FINRA Office of Dispute Resolution proof of service of the Statement of Claim upon the underlying customers together with notice of the date and time of the hearing and of their right to participate therein.

On or about October 15, 2018, Claimant filed with FINRA Office of Dispute Resolution an Affidavit regarding service of the Statement of Claim upon the underlying customers.

The Arbitrator conducted a recorded telephonic hearing on November 29, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents Valic and SA participated in the expungement hearing. Respondent Valic stated that it did not take a position on the expungement request and Respondent SA stated that it did not oppose it.

The underlying customers did not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, 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 customers not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator noted that Claimant 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 Amended Statement of Claim and testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 Nos. [REDACTED] and [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 of Arbitration Procedure (the "Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

With respect to Occurrence No. [REDACTED]

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Claimant was not involved with the customer's failure to file 5500 tax forms, which was to have been done by the customer.

With respect to Occurrence No. [REDACTED]

The claim, allegation, or information is false.

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

The dispute was caused by fraudulent activities perpetrated by corporate officers of DBSI, independent of Claimant.

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
--------------------------	------------

**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 Valic, Brecek & Young Advisors, Inc., and SA are each assessed the following:

<u>Valic</u>	
Member Surcharge	= \$ 150.00

<u>Brecek & Young Advisors, Inc.</u>	
Member Surcharge	= \$ 150.00

<u>SA</u>	
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: September 26, 2018 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: November 29, 2018 1 session	

Total Hearing Session Fees	= \$ 100.00
----------------------------	-------------

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

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

ARBITRATOR

Sterling N. Frost

-

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

Sterling N. Frost
Sole Public Arbitrator

Signature Date

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

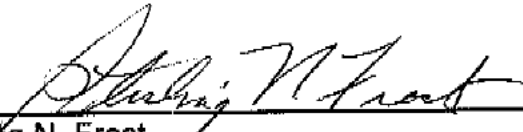
ARBITRATOR

Sterling N. Frost

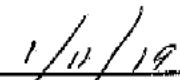
Sole Public Arbitrator

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



Sterling N. Frost
Sole Public Arbitrator



Signature Date

JANUARY 14, 2019

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