

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number

████████████████

vs.

Respondent

American Portfolios Financial Services, Inc.

Hearing Site: Newark, New Jersey

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ████████████████████: Erica Harris, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent American Portfolios Financial Services, Inc.: Frank A. Tauches, Jr., Esq., American Portfolios Financial Services, Holbrook, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 21, 2018.

Amended Statement of Claim filed on or about: January 17, 2019.

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

Statement of Answer filed by Respondent on or about: February 21, 2019

American Portfolios Financial Services signed the Submission Agreement: January 10, 2019.

CASE SUMMARY

In the Statement of Claim and the Amended Statement of Claim, Claimant asserted the following cause of action: expungement.

In the Statement of Answer, Respondent did not object to Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim and the Amended Statement of Claim, Claimant requested expungement of Occurrence Number [REDACTED] from his registration records maintained by the Central Registration Depository ("CRD"); \$1.00 in compensatory damages; and any and all other relief that the Arbitrator deems just and proper.

In the Statement of Answer, Respondent requested the Panel issue a recommendation of expungement; and deny Claimant's claim for compensatory and other damages.

At the 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.

Claimant provided FINRA Office of Dispute Resolution with proof that the customers related to Occurrence Number [REDACTED] were notified of the expungement request, the date and time of the expungement hearing, and of their right to participate and testify at the expungement hearing. The customers were served a copy of the Statement of Claim with the notice.

The Arbitrator conducted a recorded telephonic hearing on August 5, 2019 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

The customers in the underlying dispute related to Occurrence Number [REDACTED] did not participate in the expungement hearing and did not contest the request for expungement.

Respondent participated in the expungement hearing but did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, 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] contributed to the settlement amount but with no admission of fault or liability.

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: nine exhibits; Claimant's Amended Claim; and an email from the customers dated August 4, 2019.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or 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 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 findings 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 findings based on the following reasons:

The allegation is false because the Claimant was not involved in the management of the customers' policy at issue. Claimant did not recommend a foreign variable universal life to the customers. He explained the risks, fees, advantages and disadvantages, including loss of principle. The customers signed documents wherein they agreed that the Claimant would not be held liable for any loss or diminution of the value of the customers' portfolio.

The allegation is erroneous because the customers' loss was due to freezing assets over which [REDACTED] had no control. The freezing of the assets resulted from a combination of fraud and the collapse of the financial markets in 2008. The customers' assets were invested with Citadel Insurance Company, Ltd., but were being managed in a subaccount by Horizon Global Advisors. [REDACTED] had no role in either Citadel or Horizon and they were not under his control.

In Exhibit 4, Trust Advisor Agreement, the "settlers," the customers, agreed in paragraph 11 to the following: "The Settlers agree to indemnify and hold the Trust Advisor, and their respective Directors, Officers, Employee Agents, Correspondents, and Nominees harmless from and against all liability, loss claim, damage, and expense by reason of or arising from claims of third parties that

may be asserted, and from taxes, death duties, penalties and other government charges and related expenses that may be assessed or imposed in respect of the Trust or the Portfolio and from acting negligently pursuant to instructions of the Settlers. Any costs incurred by either the Trust Advisor or the Trustee resulting from the above will be reimbursed by the Settlers.”

2. Any and all claims for relief not specifically addressed herein, including requests for punitive damages, treble damages, and attorneys’ fees, if any, 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 American Portfolios 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: May 7, 2019	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: August 5, 2019	1 session

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

Michael Fischetti

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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

Michael Fischetti

Michael Fischetti
Sole Public Arbitrator

August 12, 2019

Signature Date

August 14, 2019

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