Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[redacted]

Master Consolidated Case Number:
[redacted]

vs.

Respondent
TD Ameritrade, Inc.

Hearing Site: Los Angeles, California

Consolidated with the following cases:

Claimant
[redacted]

Subordinate Case Number:
[redacted]

vs.

Respondent
TD Ameritrade, Inc.

Hearing Site: Los Angeles, California

Claimant
[redacted]

Subordinate Case Number:
[redacted]

vs.

Respondent
TD Ameritrade, Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [redacted] ("Claimant"): Eric Litow, Esq. Of Counsel to HLBS Law and Owen Harnett, Esq. HLBS Law, Westminster, Colorado.

For Respondent TD Ameritrade, Inc. ("Respondent"): Melanie L. Ronen, Esq. and Cheryl Chang, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Master Consolidated Case [redacted]

Statement of Claim filed on or about: February 21, 2018.
Claimant signed the Submission Agreement: February 21, 2018.

Consolidated Answer to Claimant's Statements of Claim ("Consolidated Answer") filed by Respondent on or about: July 12, 2018.
Respondent signed the Submission Agreement: July 25, 2018.

Subordinate Case [redacted]

Statement of Claim filed on or about: February 23, 2018.
Claimant signed the Submission Agreement: February 23, 2018.

Subordinate Case [redacted]

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

CASE SUMMARY

Master Consolidated Case [redacted]

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers [redacted] and [redacted] from his Central Registration Depository ("CRD") records.

In its Consolidated Answer, Respondent responded to all three Statements of Claim and advised that it will not oppose Claimant's request for expungement. However, Respondent took the position that Claimant is not entitled to an award of compensatory damages.

Subordinate Case [redacted]

Claimant asserted a claim seeking expungement of two customer complaints, occurrence numbers [redacted] and [redacted] from his CRD records.

Subordinate Case [redacted]

Claimant asserted a claim seeking expungement of three customer complaints, occurrence numbers [redacted] and [redacted] from his CRD records.

RELIEF REQUESTED

Master Consolidated Case [redacted]

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted] and [redacted] from his 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 occurrence number [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(B), as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriate, or conversion of funds;
3. Expungement of occurrence numbers [redacted] and [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
4. Damages in the amount of $1.00 from Respondent; and
5. Any and all other relied that the Arbitrator deems just and equitable.

In the Consolidated Answer, Respondent did not set forth a specific relief request.

Subordinate Case [redacted]

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted] and [redacted] from his 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 occurrence numbers [redacted] and [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Respondent; and
4. Any and all other relied that the Arbitrator deems just and equitable.

Subordinate Case [redacted]

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [redacted] and [redacted] from his 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 occurrence numbers [redacted] and [redacted] from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Respondent; and
4. Any and all other relied that the Arbitrator deems just and equitable.

At the expungement hearing, Claimant withdrew his request for $1.00 in damages from Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 29, 2018, the parties filed a joint stipulation to the Director of FINRA Office of Dispute Resolution ("FINRA ODR") to consolidate cases and . By letter dated March 30, 2018, the Director of FINRA ODR declined to rule on the stipulation to consolidate and advised the parties that the stipulation would be referred to the Arbitrator in the earliest filed case , once appointed, for decision. By order dated June 25, 2018, the Arbitrator granted the parties' joint stipulation to consolidate cases .

The Arbitrator conducted recorded telephonic hearing on October 15, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. By order dated October 23, 2018, the Arbitrator requested an additional expungement hearing. The Arbitrator conducted an additional recorded telephonic expungement hearing on December 7, 2018.

Respondent appeared at the October 15, 2018 expungement hearing but did not participate and did not appear at the December 7, 2018 expungement hearing and, as stated in the Consolidated Answer, did not contest the request for expungement.

None of the customers in the underlying complaints appeared at the expungement hearing. The Arbitrator found that the customers in occurrence numbers and had notice of the Statement of Claim and were invited to participate in the expungement hearing, but did not do so. See below section on Notice to the Underlying Customers.

On December 7, 2018, Claimant filed a submission entitled Recent Examples of FINRA Arbitration Case Numbers Where Expungement Was Granted and the Disclosure Date was More than Six Years Prior.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered

Notice to the Underlying Customers

The Arbitrator has addressed notice to the customers for the following occurrence numbers, for which he is recommending expungement: , , , and (" Underlying Complaints").

On August 1, 2018, Claimant provided notice that the Statement of Claim in case and notice of the expungement hearing had been served on: the customer in occurrence number (" Ms. JB"); and the customer in occurrence number (" Ms. GY"); and that the Statement of Claim in case and notice of the expungement hearing had been served on the customer in occurrence number (" Mr. PA").

On the same date, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that Ms. JB, Ms. GY and Mr. PA had been served with the Statement of Claim; and further advising that upon review of the public information available on the Lexis Nexis database, the customers in occurrence number [redacted] ("Mr. and Mrs. G") and the customer in occurrence number [redacted] ("Mr. SB") are deceased.

On November 7, 2018, Claimant provided notice that Ms. JB, Mr. PA, and Ms. GY were notified of the additional expungement hearing scheduled for December 7, 2018.

Settlement Agreements

The Arbitrator found that occurrence number [redacted] was denied and occurrence number [redacted] still appears to be pending on the BrokerCheck® Report/CRD (despite the complaint being filed in 2001) and therefore there were no settlement documents for him to review with respect to these occurrences.

The Arbitrator noted that occurrence numbers [redacted] were settled; however, Claimant testified that he was not consulted nor did he participate in any of the settlement discussions and that he was not made privy to any settlement agreements. Claimant formally requested that Respondent produce any and all settlement agreements, yet none were produced. Respondent advised that these settlement documents, in addition to other related materials, were more than ten years old and thus, beyond Respondent's normal document retention period.

Documents Relied Upon

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's BrokerCheck® Report; and the exhibits, including Claimant's notes; and Claimant's testimony.

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. Claimant's request for expungement of occurrence numbers [redacted] and [redacted] from his CRD records is denied.

2. The Arbitrator recommends the expungement of all references to occurrence numbers [redacted] and [redacted] from registration records maintained by the 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.

The Arbitrator recommends the expungement of occurrence numbers [redacted] and [redacted] pursuant to Rule 13805 of the Code of Arbitration Procedure ("Code"), and has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is false.

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

Occurrence number [redacted] (in which Mr. SB is the underlying customer)

Mr. SB had a preexisting relationship with Respondent before becoming Claimant's customer in March 2000. Mr. SB was a retiree and a sophisticated investor who had held a "Series 6 License." Through several telephone conversations with Mr. SB, Claimant determined that this customer had a thorough understanding of market risks. Mr. SB's account history reflected multiple investments in volatile market sectors, including internet-related investments. Claimant's conversations with Mr. SB and a review of Mr. SB's new account application, established Mr. SB to be an active trader, with an approximate net worth exceeding $750,000 and with an investment objective of "growth." Based on this understanding, Claimant recommended that Mr. SB invest in a Munder Capital Management mutual fund ("Munder NetNet Fund"). Claimant explained the terms, risks, fees, advantages and disadvantages of the Munder NetNet Fund. After pondering the recommendation for approximately two weeks, on March 14, 2000, Mr. SB authorized the fund's purchase. At the time of the purchase, Mr. SB told Claimant that he considered this holding to be a "long-term" investment which he intended to hold for eighteen or more months. Mr. SB's Munder NetNet Fund acquisition represented less than 3 percent of his overall portfolio. During the next year, few trades were placed on Mr. SB's behalf and all trades were executed only after Mr. SB's telephonic authorization.

On March 10, 2000, the NASDAQ index had doubled over the prior year. A short time thereafter, as part of the so-called "Dotcom Bubble," the stock market declined by approximately 10 percent. Investment capital shrank, accompanied by panic selling. Technology companies previously valued in the hundreds of millions became worthless and by the end of 2001, more than half the publicly-traded technology companies folded. This market decline caused Mr. SB's portfolio to decrease in value. Mr. SB elected to hold his Munder NetNet Fund position, anticipating a market upswing. Mr. SB never indicated any concern to Claimant regarding the Munder NetNet Fund's market performance; however, without contacting Claimant or Respondent, Mr. SB filed a complaint on July 3, 2001 alleging that the Munder NetNet Fund was "unsuitable." The complaint alleged $15,181.41 in damages. On October 9, 2001, Respondent settled Mr. SB's complaint for $11,621.00 without ever consulting Claimant or seeking any contribution from him. Although Claimant did not

participate in any settlement negotiations, he contends that the claim and settlement amount indicate the matter was likely settled for nuisance value, especially considering that defense costs could easily exceed the settlement cost. Mr. SB was not served with a copy of Claimant's Statement of Claim because he died in 2010.

Based upon the foregoing evidence and applying reasonable inferences drawn therefrom, the Arbitrator finds that Mr. SB's allegation that the "purchase of Munder NetNet Fund was not suitable" is false pursuant to FINRA Rule 2080(b)(1)(C). Ample evidence refutes the notion of unsuitability as it applies to Mr. SB. Pursuant to Claimant's testimony, when Mr. SB purchased the subject fund, he had been fully advised of the risks attached to the fund. Moreover, Mr. SB was anything but a novice investor, considering that he had a lengthy trading history before he became Claimant's customer. Mr. SB also had an increased appreciation for the risks attendant the complained-of mutual fund considering that he had been a Series 6 license holder, or made that representation to Claimant and Respondent. To be sure, Mr. SB's Series 6 license is no substitute for Claimant's responsibility to independently evaluate the suitability of the fund purchase. However, it does impute minimal knowledge concerning his investments, including the ability to investigate, evaluate and comprehend the risks involved in the subject investment. It also supports the notion that Mr. SB was a sophisticated investor. The fact that this investment was also a small percentage of Mr. SB's portfolio (approximately 3 percent) also supports a finding of suitability rather than unsuitability. Mr. SB's purchase of this "technology" fund was at the height of a volatile technology market. The fact that Mr. SB, Claimant, and many others, including various market analysts, were unable to predict the extreme volatility of the "tech" market and this technology fund, does not establish that the fund was unsuitable for Mr. SB, when he purchased it. Lastly, the amount of the settlement, supports Claimant's assertion that Respondent's settlement decision was based more on limiting its prospective defense expenses than litigating the merits of this customer's claim.

Claimant was unable to serve Mr. SB with a copy of the subject expungement request for Mr. SB's claim, because he is deceased. However, even assuming Mr. SB voiced an objection to the expungement request, Claimant's testimony persuasively establishes Mr. SB's allegations to be false. The Arbitrator also finds the evidence presented favoring expungement of this occurrence is sufficiently compelling so that the recommended expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

Occurrence number [redacted] (in which Ms. JB is the underlying customer)

Claimant began handling Ms. JB's brokerage account in August 1999. Before offering her any trading advice, Claimant had many conversations with Ms. JB. Ms. JB was well educated. She was a retired college professor with a doctorate degree. Claimant evaluated Ms. JB's portfolio and determined that she had a "growth" investment objective. This conclusion was substantiated by Ms. JB's prior mutual fund investments and Claimant's testimony that Ms. JB claimed not to be a novice fund investor. Ms. JB's account included U.S. Treasury Bonds which she intended to leave to her heirs and were not necessary for her living expenses. She therefore

decided to liquidate the bonds in favor of growth investments. Claimant and Ms. JB discussed various investment options, including Flag Investors Communications Fund C1 B ("Flag Fund"). Claimant provided Ms. JB with extensive information regarding the Flag Fund, including its holdings and associated fees, as well as the Flag Fund's prospectus. Ms. JB told Claimant that she understood the Flag Fund's fee structure and related expenses, and on October 9, 1999, Ms. JB bought 350 Class B shares of Flag Fund. This purchase constituted approximately 2 percent of Ms. JB's investment portfolio. These Class "B" shares had a six-year declining sales charge, but avoided a front load fee of 5.5 per cent. Ms. JB periodically contacted Claimant for an updated status of her Flag Fund position. Ms. JB never suggested that the Flag Fund was unsuitable for her, nor did she state that the Flag Fund was improperly or inaccurately represented to her.

Approximately seven months after purchasing the Flag Fund, in or around May 2000, Ms. JB instructed Claimant to stop reinvesting her Flag Fund dividends. Instead, she directed Claimant to deposit future dividends into her money market account, thus allowing her latitude to make other investments. In December 2000, due to an administrative mistake, Ms. JB's next Flag Fund dividend was reinvested, rather than placed in her money market account. Respondent acknowledged that this was an inadvertent administrative error. Ms. JB first demanded that the dividend reinvestment be reversed. She later amended this demand to include reversal of all previously reinvested dividends since her initial 1999-purchase. On May 10, 2001, approximately six months after the mistaken dividend reinvestment, Ms. JB alleged a "lack of suitability and failure to disclose material facts" with reference to her October 9, 1999-Flag Fund purchase. She also alleged $13,415.50 in damages.

In a June 19, 2001-letter to Ms. JB, an officer for Respondent reiterated the above facts and explained that because of the unintentional administrative mistake, Respondent would agree to reverse all dividend and capital distributions and to credit her account with money market interest as if the dividends had been paid in cash. However, Ms. JB increased her prior demands to include reversing the original fund purchase. Respondent initially declined Ms. JB's final demand and concluded that "[w]hile we are sorry that this security has not performed to your expectations, we cannot guarantee the performance of any investment, nor are we responsible for downturns in the market. As we discussed . . . no basis for a claim exists given the aforementioned circumstances." On September 20, 2001, Respondent settled Ms. JB's claim for $13,415.00. Respondent did not consult with Claimant regarding this settlement, nor did Respondent seek any contribution from Claimant, nor was there any finding or admission that Claimant committed any wrongdoing, nor was there any explanation offered for the settlement.

Considering Claimant's undisputed and plausible explanation of the underlying facts as buttressed by Respondent's denial letter, the Arbitrator finds Ms. JB's claim of "Lack of suitability and failure to disclose material facts with reference to 10/9/1999 purchase of 350 shares of Flag Investors Communications Fund C1 B" is false pursuant to FINRA Rule 2080(b)(1)(C) and warrants expungement.

Claimant had a reasonable basis to believe Ms. JB's Flag Fund purchase was suitable for her. Claimant had explained the terms, risks, fees, advantages and

disadvantages of the Flag Fund to Ms. JB before she made the purchase. Claimant's testimony established that Ms. JB initially represented herself to be more than a novice investor and that she understood the terms and risks of her investment. The fact that Ms. JB's dividends were reinvested contrary to her instructions, due to an unintentional mistake has no objective link to a conclusion that the fund was unsuitable for Ms. JB or Claimant's purported failure to disclose material facts concerning this investment. Ms. JB voiced no objection to several fund dividend reinvestments as reflected by her monthly statements. Upon a changed instruction that was mistakenly not followed—through no fault of Claimant's—Ms. JB asked that all prior dividend reinvestments be reversed. This request morphed into an unreasonable ultimatum that the entire investment be rescinded. The undisputed evidence makes it reasonable to conclude that Ms. JB's ultimate demand was premised on the fact that her investment had lost market value—rather than a lack of undisclosed material facts or proof that the fund was an unsuitable investment. Claimant argues that Respondent's settlement payment, amounting to rescission of the disputed purchase, was motivated by a simple economic decision, considering that the settlement cost was probably far less than the cost of defending against a questionable claim. Implicit in this argument is the fact that the repurchased publicly traded fund retained some value, so its eventual resale by Respondent offset a significant amount of any settlement number. So too, it is probable, given the detailed chronology of what began as an ostensible customer service issue, that Respondent determined the relatively nominal settlement amount to placate an increasingly troublesome customer, was worth more than standing on principle. Again, the totality of the evidence persuasively refutes Ms. JB's claim that her fund purchase was unsuitable or that she was either misinformed or not informed regarding material facts concerning the subject fund.

Occurrence number [redacted] (in which Mr. and Mrs. G are the underlying customers)

Mr. and Mrs. G, were a married couple who had a preexisting account with Respondent before they met Claimant and became his customers in July 1999. Then, Mr. G was approximately 87 years old and Mrs. G was approximately 71 years old. They had a reported liquid net worth of $11.5 million which was heavily concentrated in four common stock equity positions: Xerox, United Technologies, Time Warner and Intel. Mr. and Mrs. G also maintained two other brokerage firm accounts with an approximate aggregate value of $2.6 million. Mr. G had been primarily responsible for making the couple's trading decisions, but Claimant had numerous discussions regarding the account and trading decisions with both customers. In fact, while Claimant serviced this account, he was also in regular contact with Mr. and Mrs. G's tax advisor and their accountant. Claimant initially contacted Mr. G to recommend the purchase of Edison preferred stock, of which these customers purchased 400 shares. Claimant eventually advised them to further diversify their holdings and consider capital gains tax planning. The couple's investing strategy was simple and aggressive. They wished to proactively capitalize on available profit opportunities. Claimant testified having a vivid recollection of Mr. G, often declaring that he did want not to miss any stocks that "go to the moon."

As a means of diversification, Claimant suggested that Mr. and Mrs. G invest in communications and healthcare unit investment trusts. In October 1999, the customers followed Claimant's advice by purchasing Federated Communications and Tech Fund. When this investment doubled in value by January 2000, Claimant advised that they sell the fund and realize the resulting profit. Mr. G declined Claimant's profit taking advice, because he did not want to pay capital gains tax. By this date, the total portfolio's value had increased by 30 percent to $15 million and by August 2000, the account's value increased to $18.7 million. Throughout this period, Mr. and Mrs. G also invested approximately $922,000 in three mutual funds (Alliance Health Care Fund, Federated Communications, and Munder Future Technology) and five unit investment trusts (UIT World Wide Wireless, UIT First Trust Fiber Optics, UIT Nasdaq Target 15 Port, UIT Nuveen Bandwidth and UIT Nuveen E-Business) that had a cumulative value increase of approximately $370,000. A margin balance was created by buying these investments and was to be paid via the sales of various heavily concentrated stock positions as part of a tax planning strategy discussed with Mr. G and the customers' tax advisor. At some point, Mrs. G was considering selling her house and purchasing a new house. She asked Claimant if she could take an additional margin loan to purchase the new house, as suggested by the customer's tax advisor. Mr. and Mrs. G began liquidating some unit investment trusts at a loss, i.e., to offset capital gains liability for large profits realized from the sale of their preexisting Intel stock holdings. Later, Mr. and Mrs. G closed their account with Respondent. When the account was closed its value had increased by $2.5 million.

On November 28, 2001, Mrs. G wrote to Respondent and alleged "trading in high-[r]isk UIT's and mutual fund B shares with increasing use of margin" and alleged $470,000 in damages. This 2001-claim is listed on Claimant's BrokerCheck® Report as "pending." Mr. and Mrs. G never pursued their alleged claim in court or arbitration, nor has the alleged claim been settled. Mr. G passed away in 2002 at age 89. Mrs. G passed away in 2008 at age 80.

The Arbitrator finds that Mr. and Mrs. G's allegation of "trading in high-[r]isk UIT's and mutual fund B shares with increasing use of margin" is false pursuant to FINRA Rule 2080(b)(1)(C). This allegation implies that the two investment types and margin use were all unsuitable for these customers. However, Claimant's compelling evidence leads to a contrary conclusion. Mr. and Mrs. G had a lengthy trading history before they met Claimant and maintained significant sized accounts with Respondent and two other brokerage houses. They also demonstrated sophistication and investment savvy, not only because of their independent decisions of when and what securities to buy and sell, but because of their ongoing consultation with both a tax planner and a certified public accountant, during all relevant times. Mr. and Mrs. G were also ready and willing to purchase less conservative and riskier investments as evidenced by Mr. G's frequent exclamation that he was interested in stocks that "go to the moon." The cumulative size of the complained-of three mutual fund holdings and five unit investment trust holdings was less than one tenth of the customers' overall portfolio maintained with Respondent. When these customers closed their account with Respondent, the account was profitable and had increased in value from $11.5 million to $13.6 million. Affording the customers a reasonable opportunity to be heard concerning the expungement

request of their claim was made practically impossible by their deaths. A timelier expungement request and reasonable notice to these customers, or their heirs, would have clearly been preferable to the current situation. However, the extremely nebulous and attenuated nature of this claim, that was never settled nor pursued in court or arbitration, strongly suggests that any customer objections would have had minimal probative effect on Claimant's expungement request.

Occurrence number [redacted] (in which Mr. PA is the underlying customer)

Mr. PA became Claimant's client in 2000. He was a retired physician who, along with his wife, then owned a house in an upscale neighborhood and had a portfolio mostly consisting of fixed income investments with several brokerage firms. Mr. PA's portfolio had an approximate value of $1.6 million and his overall net worth was approximately $2 million. Claimant met with Mr. PA on at least two occasions and discussed Mr. PA's investment experience and expectations. Mr. PA explained that his fixed income holdings had lost value and were not meeting his growth objective. He wanted to grow his investments "long term" over the next four to five years, with moderate to low risk. Claimant evaluated Mr. PA's portfolio and determined that most of his holdings had low "Morningstar" ratings and that the portfolio would benefit from higher rated funds and broader diversification in various investment sectors, particularly the international sector. Claimant suggested Mr. PA consider better options, but stressed that achieving a higher growth objective, i.e., "returns," would require investments with increased risk. Mr. PA owned a high yield bond fund (Northeast High Yield Bond Fund) that was "B" rated and below investment grade. Claimant recommended converting this asset into international funds for increased growth potential. Claimant also recommended that Mr. PA rebalance his portfolio by liquidating two midcap growth funds (Baron Asset Fund and Alliance Premier Growth Fund) and moving the assets into a largecap growth fund. Claimant's recommendations were based primarily on Morningstar Reports, whereas the recommended fund acquisitions were all highly rated by that analysis service and rated higher than Mr. PA's current holdings, while presenting relatively comparable risk. Mr. PA told Claimant that he preferred "Class B" shares to avoid front loaded charges on his fund purchases.

With Mr. PA's authorization, Claimant purchased and sold portions of Mr. PA's account. Thereafter, Mr. PA, changed his mind with respect to some trades and told Claimant that he wished to repurchase approximately $90,000 of the same assets that he had once held. Claimant reminded Mr. PA that this would likely generate the very back-end costs that Mr. PA specifically sought to avoid. In July 2001, pursuant to Mr. PA's explicit instruction, and with the expressed understanding that Mr. PA had not changed his investment objective, Claimant repurchased various assets for him with no additional sales charge or commission. As part of the market volatility associated with the so-called "Dotcom Bubble," in 2001 Mr. PA's account declined approximately 1.5 percent in value. In December 2001, Claimant left Respondent's brokerage firm and became associated with another firm. On January 27, 2004, approximately two years after Claimant left Respondent and stopped servicing Mr. PA's account, Mr. PA made a claim alleging "unsuitable solicitation of four mutual funds and one unit investment trust." The claim also alleged damages of $36,790.00.

Respondent denied the claim on February 27, 2004. Mr. PA never pursued his claim in court or in arbitration.

The Arbitrator finds that this claim is false, pursuant to FINRA Rule 2080(b)(1)(C). The evidence presented strongly supports Claimant's argument that the investments made on Mr. PA's behalf were suitable at the time they were made. (See FINRA Rule 2111). Pursuant to Claimant's testimony, buttressed by contemporaneous holding pages and notes, Claimant fully explained his trade recommendations to Mr. PA before executing the trades. Mr. PA demonstrated that he was capable of evaluating and comprehending the risks and rewards of all of his investments. Mr. PA also displayed an independent ability to make his own decisions, as evidenced by his repurchase of funds contrary to Claimant's advice. Mr. PA's claim came almost two years after Claimant left Respondent for another brokerage firm. In the interim, the market suffered notable instability and significant short term decline, all the while, Mr. PA had relatively unfettered opportunity to personally reevaluate his holdings and to seek advice from Respondent, or others, to limit his losses or consider alternate trading strategies.

The Arbitrator recommends the expungement of occurrence number [redacted] pursuant to Rule 13805 of the Code, and has made the following Rule 2080 affirmative findings of fact:

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 findings based on the following reasons:

Occurrence number [redacted] (in which Ms. GY is the underlying customer)

Ms. GY became Respondent's "putative" client sometime in 2000, but there is no hard evidence that this customer was also Claimant's customer or that he specifically serviced her account. In February 2000, Ms. GY purchased one or more mutual funds. Two years after the purchase or purchases, Ms. GY sent an April 18, 2002-letter to the Securities Exchange Commission "alleging losses of $9,769.35 due to unsuitable recommendations made by RR in February 2000." As reported on the Claimant's BrokerCheck® Report, Respondent settled this matter on April 25, 2002 for $9,769.35, without any contribution from or consultation with Claimant.

Claimant testified never having any contact with or knowledge of Ms. GY. He has absolutely no memory of meeting with or speaking with Ms. GY, nor ever viewing any documentation for this customer's account. The first time Claimant became aware of Ms. GY's existence was after her claim was filed—and settled. Besides Claimant having no memory of ever meeting or speaking with Ms. GY, he has absolutely no recollection of blindly recommending any trade for this phantom customer. Claimant insists that Respondent's connecting this complaint to him was a clear mistake, not only because the complaint fails specifically to identify him by name, but also because Respondent never contacted him or his assistant to confirm

or deny the allegations as they might apply to Claimant, before or after any settlement. This might have included a review of any existing trade tickets, telephone conversations or trade blotters. Ms. GY's reference to an unidentified "RR" (registered representative), could have referred to any one of several individuals associated with Respondent and not necessarily Claimant.

Other than Respondent's unexplained association of Claimant with Ms. GY's account as reported on Claimant's BrokerCheck® Report, the record is devoid of evidence that Claimant serviced this account or had any specific connection with Ms. GY, or her purchase of an investment or investments that were allegedly unsuitable for her. It is difficult, if not impossible to evaluate Respondent's settlement of this nebulous claim absent additional particulars. The reported settlement of this claim, one week after it was received, minimally suggests that Respondent summarily found the claim to be clear cut and having merit. Without more information concerning this customer's background, investment objectives and the subject investment/s, it is only conjecture that a claim settled so expeditiously was due to a simple administrative mistake rather than an unsuitable recommendation. Bearing in mind that Ms. GY was twice noticed of Claimant's expungement request and Claimant's steadfast assertion that he had no connection with Ms. GY's complaint, Claimant has established by a preponderance of the evidence that he was not involved in the alleged investment-related sales practice, as set forth in FINRA Rule 2080(b)(1)(B). Moreover, considering the few available specifics surrounding this claim, especially, any evidence linking this claim with Claimant, the claim, in and of itself, has no meaningful regulatory value nor does it provide any meaningful protection of the public.

For all occurrence numbers

An important consideration that applies to the expungement requests discussed above is the considerable time that has transpired between the various customer claims and Claimant's expungement requests. Claimant maintains that when most of the subject claims were initiated, the internet was in its nascent stages and that for many years the investing public took little notice of reported customer claims. In turn, the subject claims had minimal impact on his business reputation and consequently, he paid little or no attention to these claims. Now, the situation has changed dramatically. With the proliferation of "smart phones" and the public's ever-increasing internet use, Claimant's BrokerCheck® Report is accessible within mere seconds—without any safeguards against spurious, erroneous and factually unfounded customer allegations and claims. Claimant concedes that it would have been far better for him not to have waited so long to take corrective action; nevertheless, the underlying facts establish that each claim for which expungement is recommended is without merit, despite its age.

3. 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, as a party, Respondent is assessed the following:

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 a single arbitrator @ $50.00/session			=$50.00
Pre-hearing conference:	June 15, 2018	1 session	
Two (2) hearing sessions on expungement request @ $50.00/session			=$100.00
Hearing Date:	October 15, 2018	1 session	
	December 7, 2018	1 session	
Total Hearing Session Fees			=$150.00

The Arbitrator has assessed $150.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Elliott D. Finkel - 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

/s/ Elliott Finkel
Elliott D. Finkel
Sole Public Arbitrator

March 22, 2019
Signature Date

March 22, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)