

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

AXA Advisors, LLC  
The Equitable Life Assurance Society  
of The United States  
Allstate Financial Services, LLC

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“██████████ Harry Freedman, Esq, AdvisorLaw, LLC, Broomfield, Colorado.

For Respondents AXA Advisors, LLC (“AXA Advisors”), and The Equitable Life Assurance Society of The United States (“Equitable Life”): Michael Biondi, Esq., AXA Equitable Life Insurance Company, New York, New York.

For Respondent Allstate Financial Services, LLC (“Allstate Financial”): Kate Miller, Esq., Seyfarth Shaw LLP, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: June 27, 2018.

████████████████████ signed the Submission Agreement: June 27, 2018.

Joint Statement of Answer filed by Respondents AXA Advisors, LLC, and The Equitable Life Assurance Society of The United States on or about: September 7, 2018.

AXA Advisors, LLC signed the Submission Agreement: September 7, 2018.

The Equitable Life Assurance Society of The United States did not sign the Submission Agreement.

Statement of Answer filed by Respondent Allstate Financial Services, LLC on or about: August 16, 2018.

Allstate Financial Services, LLC signed the Submission Agreement: August 16, 2018.

### **CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Joint Statement of Answer, Respondents AXA Advisors, and Equitable Life denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondents AXA Advisors, and Equitable Life took no position on Claimant's request for expungement.

Unless specifically admitted in the Statement of Answer, Respondent Allstate Financial denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent AllState Financial took no position on Claimant's request for expungement.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers [REDACTED] [REDACTED] and [REDACTED] from his CRD records; an award of damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In their joint Statement of Answer, Respondents AXA Advisors, and Equitable Life requested that the Arbitrator deny Claimant's request for damages.

In the Statement of Answer, Respondent Allstate Financial requested that Claimant [REDACTED] be required to present sufficient evidence to establish the allegations in the Statement of Claim, that no award or order be sought against Allstate Financial, and that no monetary damages be awarded to Claimant.

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

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

Respondent, Equitable Life did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On February 4, 2019 the Arbitrator conducted a recorded telephonic hearing so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement.

At the hearing, Claimant withdrew his request for monetary damages.

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

The customers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]

The Arbitrator noted that there were no settlement documents related to Occurrence Number [REDACTED] that the settlement amount was *de minimis*, and that the Claimant did not contribute to the nominal settlement amount.

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

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: all pleadings, party submissions, Claimant's BrokerCheck® Report, the testimony of Claimant, an application concerning annuity, correspondence from Claimant's employers to the customers, and correspondence from the customers to Claimant's employers.

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 provided by the parties and 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 the registration records maintained by the Central Registration Depository ("CRD"), for Claimant [REDACTED] [REDACTED] [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 finding of fact:

The claim, allegation, or information is false.

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

[REDACTED] was the customers' Financial Advisor. The customers complained that [REDACTED] failed to disclose material terms concerning the adverse consequences that would result from the withdrawal of money from a variable annuity. The customers also complained that [REDACTED] encouraged them to complete forms in blank. The customers' complaint did not arise until several years after they purchased the investment. [REDACTED] testified credibly that he discussed with the customers the adverse consequences of withdrawing funds from the annuity, at the time of the purchase and before they actually withdrew the money. [REDACTED] also denied that the customers signed any forms in blank.

It is noteworthy that the investment at issue was fully disclosed to the customers in writing, although there is no way to determine what was said to the customers verbally. Before the customers purchased the security, both husband and wife spoke with [REDACTED] concerning the investment. The Arbitrator concludes that based upon [REDACTED] testimony and the fact that the customers did not take any further action, that the claims and allegations were false.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the 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 finding of fact:

The claim, allegation, or information is false.

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

[REDACTED] was the customer's Financial Advisor. The customer complained that [REDACTED] placed her in mutual fund A shares rather than C shares. [REDACTED] testified that both he and his supervisor met and discussed the mutual funds with the customer before the investments were executed. Although the customer's relative had suggested C shares, [REDACTED] and his supervisor recommended the A shares based upon the customer's profile and time horizon. The documents received by the customer also memorialized the fact that A shares were purchased and no

complaints were received from the customer until almost a year later. Based upon [REDACTED] testimony and the fact that the customer did not take any further action, the Arbitrator concludes that the claims and allegations were false.

3. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the Central Registration Depository ("CRD"), for Claimant [REDACTED] [REDACTED] [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 finding of fact:

The claim, allegation, or information is false.

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

[REDACTED] was the customer's Financial Advisor. The customer claimed that the face amount of a variable life policy was changed without his permission and that checks that the customer had forwarded to [REDACTED] for the accounts of the customer's children were misdirected. [REDACTED] explained that the change in the face amount of the policy was false because no such change could be made without the customer's executing documents in advance. In addition, the checks were misplaced during the process of [REDACTED] office being moved to a new location. Eventually, the checks were found and properly deposited.

In response to the Arbitrator's February 22, 2019 Order, counsel for AXA Advisors confirmed that AXA was unable to locate a "settlement agreement" after a thorough search. Moreover, counsel insightfully and accurately noted that [REDACTED] BrokerCheck actually indicates that "[t]here was a loss to the firm of \$133.25," not that there was an actual settlement payment to the customer in that amount. Counsel further noted that [REDACTED] BrokerCheck "does not describe that sum [*i.e.*, \$133.25] as a payment to [the customer], and AXA Advisors has not identified any records indicating that a payment in that amount was made to [the customer]."

Although [REDACTED] may have been confused about this resolution of the customer dispute (which is understandable insofar as he was not involved in the resolution), this does not reflect adversely on his credibility concerning this issue. Based upon the foregoing, the Arbitrator concludes that the claims and allegations were false.

4. 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents AXA Advisors, Equitable Life, and Allstate Financial, are each 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: October 29, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: February 4, 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**

Louis H. Miron

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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**



\_\_\_\_\_  
Louis H. Miron  
Sole Public Arbitrator



\_\_\_\_\_  
Signature Date

**March 14, 2019**

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