

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Estate of David McOllough

Case Number: 18-02516

vs.

Respondent
Edward Jones

Hearing Site: Denver, Colorado

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant Estate of David McOllough (“Claimant”): Thomas J. Radio, Esq., Felhaber Larson, Minneapolis, Minnesota.*

For Respondent Edward Jones (“Respondent”): Matthew E. Johnson, Esq., Dowd Bennett LLP, Denver, Colorado.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: July 12, 2018.
Claimant signed the Submission Agreement: July 12, 2018.

Statement of Answer filed by Respondent on or about: August 31, 2018.
Respondent signed the Submission Agreement: August 31, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; and negligent supervision. The causes of action relate to Claimant’s investments in various securities, including unspecified bonds, energy funds, Master Limited Partnerships, and REITs.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages in the amount of \$75,000.00;
2. Punitive damages in an amount to be determined from the evidence accumulated during discovery;
3. Interest, costs, and attorneys' fees; and
4. Such other damages the Arbitrator deems appropriate.

In the Statement of Answer, Respondent requested:

1. Claimant's request for relief be denied;
2. All costs of this matter be assessed to Claimant;
3. Expungement be granted to Unnamed Party Jacob Ambrose Rochleau ("Rochleau") consistent with FINRA rules and procedures; and
4. Such other relief be granted in favor of Respondent as the Arbitrator deems just and proper under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On October 4, 2021, Claimant filed a notice of voluntary dismissal with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim. In the notice, Claimant notified that it took no position on the request for expungement.

On October 12, 2021, Respondent filed a Motion for Expungement on behalf of Rochleau, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on October 19, 2021, so the parties could present oral argument and evidence on Rochleau's request for expungement.

Claimant did not participate in the expungement hearing.

The Arbitrator reviewed Rochleau's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the Central Registration Depository ("CRD").

The Arbitrator also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Rochleau did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; exhibits; and Rochleau'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. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1994283) from registration records maintained by the CRD for Unnamed Party Jacob Ambrose Rochleau (CRD Number 5927149) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Jacob Ambrose Rochleau 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 12805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

Having read the documents and hearing testimony of Rochleau, the Arbitrator recommends expungement. It was clear from the documents and testimony that the claims asserted by Claimant were impossible or clearly erroneous and false.

Documents and testimony at the hearing showed that the allegations in the Statement of Claim, including breach of fiduciary duty, negligence and negligent supervision, were not supported by the original claim. Rochleau had not presented the Vanguard Natural Resources investment to Claimant, instead Claimant had brought this investment to Rochleau. Even though Rochleau discouraged Claimant from making an investment in Vanguard Natural Resources, Claimant directed Rochleau to purchase shares of Vanguard Natural Resources anyway. The claims of breach of fiduciary duty, negligence and negligent supervision are not factually possible and clearly erroneous. The testimony also showed the allegations were false. There was no documentation in the original claim that would support these in the rest of Claimant's accounts.

Upon review of the settlement agreement and hearing testimony of Rochleau, it was determined that Rochleau was not involved in the settlement negotiations and did not contribute to the final settlement.

The Arbitrator finds no reason that denying the expungement would benefit future investors or regulatory authorities.

- Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

| | | |
|--------------------------|------|--------|
| Initial Claim Filing Fee | = \$ | 975.00 |
|--------------------------|------|--------|

**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 | = \$ | 1,100.00 |
| Member Process Fee | = \$ | 2,250.00 |

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

| | | |
|---------------------------------------------|------|--------|
| August 27-29, 2019, postponement by Parties | = | Waived |
| February 4-6, 2020, postponement by Parties | = \$ | 450.00 |
| <hr/> | | |
| Total Postponement Fees | = \$ | 450.00 |

The Arbitrator has assessed \$225.00 of the postponement fees to Claimant.

The Arbitrator has assessed \$225.00 of the postponement fees to Respondent.

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, which lasts four (4) hours or less. Fees associated with these proceedings are:

| | | |
|--------------------------------------------------------------------------|-----------|----------|
| Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session | = \$ | 900.00 |
| Pre-Hearing Conferences: October 30, 2018 | 1 session | |
| January 7, 2021 | 1 session | |
| <hr/> | | |
| One (1) hearing session on expungement request @ \$450.00/session | = \$ | 450.00 |
| Hearing: October 19, 2021 | 1 session | |
| <hr/> | | |
| Total Hearing Session Fees | = \$ | 1,350.00 |

The Arbitrator has assessed \$450.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$900.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Donald N. Tolin

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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

Donald N. Tolin

Donald N. Tolin
Sole Public Arbitrator

11/13/2021

Signature Date

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November 15, 2021

Date of Service (For FINRA Dispute Resolution Services use only)