

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Jason Lee Ray Betts  
Michelle L. Marquez

Case Number: 19-00339

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Los Angeles, California

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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: Associated Persons vs. Member

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Jason Lee Ray Betts (“Betts”) and Michelle L. Marquez (“Marquez”): Philip M. Aidikoff, Esq., Aidikoff, Uhl & Bakhtiari, Beverly Hills, California.

Hereinafter, Betts and Marquez are collectively referred to as “Claimants”.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Patrick J. Mulligan, Esq., Bressler, Amery Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: January 29, 2019.

Amended Statement of Claim filed on or about: June 25, 2019.

Marquez signed the Submission Agreement: January 28, 2019.

Betts signed the Submission Agreement: June 25, 2019.

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

Answer to Amended Statement of Claim filed by Respondent on or about: August 26, 2019.

Respondent signed the Submission Agreement: March 21, 2019.

### **CASE SUMMARY**

In the Statement of Claim, Marquez asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository ("CRD") and a claim seeking expungement of a termination statement from her Form U5, alleging that the information is defamatory in nature.

In the Statement of Answer, Respondent took no position on Marquez's request for expungement and asserted various affirmative defenses.

In the Amended Statement of Claim, Claimants asserted a claim seeking expungement of all reference to the employment disclosures from their Form U5, alleging that the information is defamatory in nature. Marquez asserted a claim seeking expungement of customer dispute information in her CRD records.

In the Answer to the Amended Statement of Answer, Respondent opposed Claimants' request for expungement, denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Marquez requested:

1. Expungement of Occurrence Numbers 1983621, 1987717, and 1987718 from her CRD records; and
2. Compensatory damages in the amount of \$50.00 from Respondent

In the Statement of Answer, Respondent objected to Marquez's request for \$50.00 in compensatory damages.

In the Amended Statement of Claim, Claimants requested:

1. Expungement of the customer disclosure, Occurrence Number 1983621, from Marquez's CRD records pursuant to FINRA Rule 2080;
2. Expungement of all references to the employment disclosures from Claimants' CRD records because they are defamatory in nature: Occurrence Number 1987717 and 1987718 from Marquez's Form U5 and Occurrence Number 1987510 from Betts' Form U5;
3. Monetary damages in an amount according to proof, but not less than \$250,000.00;
4. Attorneys' fees; and
5. Costs that the Panel deems just and proper.

In the Answer to the Amended Statement of Claim, Respondent requested denial of Claimants' requests for expungement and any such further relief, including monetary damages, fees, and costs.

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

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

On June 25, 2019, Marquez filed a Motion to Amend the Statement of Claim. On July 12, 2019, Respondent filed its opposition. By Order dated August 1, 2019, the Arbitrator granted Marquez's motion.

On September 29, 2020, the parties filed a letter stipulating to the following:

[T]o have the Chairperson for this matter, Joyce Hurley, preside as the sole arbitrator over the arbitration hearing. Please dismiss the remaining arbitrators other than Ms. Hurley.

Additionally, [Betts] hereby dismisses all his claims relating to the above matter against Respondent with prejudice...

[Marquez] also dismisses all of her claims with prejudice with the sole exception of her request for expungement of Occurrence Number 1983621 on her Form U4 and the challenged disclosures on her Form U5. In addition, [Marquez] dismisses with prejudice any and all claims for monetary damages, fees, or costs...

On December 28, 2020, Marquez advised that the customer in Occurrence Number 1983621 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on January 19, 2021, so the parties could present oral argument and evidence on Marquez's request for expungement.

Respondent participated in the expungement hearing and stated that it took no position with regard to Marquez's request for expungement.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer had notice of the expungement request and hearing.

The Arbitrator reviewed Marquez's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1983621, 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 expungement request and that Marquez did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Marquez's testimony; Marquez's BrokerCheck® Report; Respondent's account reconciliation form; and the settlement agreement.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement 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 1983621 from registration records maintained by the CRD for Claimant Michelle L. Marquez (CRD Number 2963891) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michelle L. Marquez 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 (“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:

The Customer’s initial claim was that he did not sign the forms for Respondent to open accounts and manage his money. The Arbitrator found that the Customer’s claim was false because the evidence presented shows there were numerous exchanges of documents and communications between the Customer and Marquez and there were never any questions about the validity of the accounts or the scope of tasks performed by Marquez. The Customer was obviously aware that the accounts were open, the scope of the authority given to Marquez and his expectations of services available to him as shown by the numerous transactions he requested, and Marquez and Respondent performed. Respondent did not report finding any documents improperly completed or signed by anyone other than the Customer. It appears that the Customer’s refusal to follow financial plans jointly developed by himself and the firm led to the erosion of his assets and became unhappy upon his ultimate realization of that reality.

2. The Arbitrator further recommends the expungement of all references to Occurrence Numbers 1987717 and 1987718 from the registration records maintained by the CRD for Claimant Michelle L. Marquez. Any “Yes” answers should be changed to “No” as applicable.

The above recommendations are made based on the defamatory nature of the information. The registration records are not automatically amended to include the changes indicated above. Claimant Michelle L. Marquez must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure Department (“CRED”) for review.

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

Initial Claim Filing Fee = \$ 1,425.00

*\*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 = \$ 1,900.00  
Member Process Fee = \$ 3,750.00

**Late Pre-hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

April 16, 2020, cancellation requested by Parties = \$ 100.00

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Total Late Pre-hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

**Postponement Fees**

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

October 1-2, 2019, postponement requested by Respondent = \$ 50.00

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Total Postponement Fees = \$ 50.00

The Arbitrator has assessed \$25.00 of the postponement fees to Marquez.

The Arbitrator has assessed \$25.00 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:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session = \$ 50.00  
Pre-Hearing Conference: May 22, 2019 1 session

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 900.00  
Pre-Hearing Conferences:  
December 2, 2019 1 session  
June 24, 2020 1 session

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: December 5, 2019	1 session	
July 15, 2020	1 session	
One (1) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing: January 19, 2021	1 session	
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Total Hearing Session Fees	= \$	3,650.00

The Arbitrator has assessed \$1,575.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$250.00 of the hearing session fees to Marquez.

The Arbitrator has assessed \$1,825.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Joyce L. Hurley

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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**

***Joyce L. Hurley***

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Joyce L. Hurley  
Sole Public Arbitrator

**02/24/2021**

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Signature Date

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February 25, 2021

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