

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

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In the Matter of the Arbitration Between:

Claimant  
Kenneth E. Kwalik

Case Number: 19-01064

vs.

Respondent  
Goldman Sachs & Co. LLC

Hearing Site: New York, New York

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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 Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Kenneth E. Kwalik: Jonathan Sack, Esq., and Alex Seidenberg, Esq., Sack & Sack, LLP, New York, New York.

For Respondent Goldman Sachs & Co. LLC: Eric A. Bensky, Esq., Murphy & McGonigle, PC, Washington, District of Columbia, and Katherine McGrail, Esq., Murphy & McGonigle, PC, Glen Allen, Virginia.

**CASE INFORMATION**

Statement of Claim filed on or about: April 18, 2019.  
Kenneth E. Kwalik signed the Submission Agreement: April 15, 2019.

Statement of Answer filed by Respondent on or about: July 15, 2019.  
Goldman Sachs & Co. LLC signed the Submission Agreement: July 15, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following cause of action: expungement of Form U5.

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 expungement of Claimant's Form U5; pre-judgement interest, costs, and attorneys' fees; and such other and further relief that the Panel deems just and proper.

In the Statement of Answer, Respondent requested an award denying any and all claims asserted by Claimant; and assessing all forum fees against Claimant.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On August 19, 2019, Respondent filed a Motion to Dismiss pursuant to Rule 13504(a) of the Code of Arbitration Procedure ("Code"). On October 15, 2019, Claimant filed a response opposing the Motion to Dismiss. On October 21, 2019, Respondent filed a reply in further support of the Motion to Dismiss. On November 18, 2019, the Panel heard oral arguments on the Motion to Dismiss. On November 19, 2019, the Panel denied the Motion to Dismiss.

On September 6, 2021, the parties filed a stipulation in which they agreed that the Panel would order FINRA to modify the Termination Explanation in Section 3 of Claimant's Form U5 to read "Concerns involving business-related statements made to subordinates"; and apportion forum fees for the arbitration between Claimant and Respondent on a 50-50 basis.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Kenneth E. Kwalik's (CRD Number 5072890) Form U5 filed by Goldman Sachs & Co. (CRD Number 361) on November 10, 2015 and maintained by the Central Registration Depository ("CRD"). The Reason for Termination shall be changed to "Other". The Termination Explanation shall be replaced with the following language: "Concerns involving business-related statements made to subordinates." This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Panel further recommends the expungement of all references to Occurrence Number 1841990 maintained by the CRD for Kenneth E. Kwalik. Any "Yes" answers should be changed to "No," as applicable.

The above recommendations are made with the understanding that the registration records are not automatically amended. Kenneth E. Kwalik must obtain confirmation of this Award from a court of competent jurisdiction, before the CRD will execute the expungement directive, and must forward a copy of the Court Order to FINRA's Credentialing, Registration,

Education and Disclosure Department for the amendments to be incorporated into the Registration Records.

2. Any and all claims for relief not specifically addressed herein, including any requests for 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:

Expungement Filing Fee = \$ 1,575.00

*\*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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Goldman Sachs & Co. LLC is assessed the following:

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

#### **Hearing Session Fees and Assessments**

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

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00  
Pre-Hearing Conference: April 14, 2020 1 session

Five (5) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 5,625.00  
Pre-Hearing Conferences: August 20, 2019 1 session  
November 18, 2019 1 session  
April 20, 2020 1 session  
October 13, 2020 1 session  
June 8, 2021 1 session

Four (4) hearing sessions on expungement request @ \$1,125.00/session = \$ 4,500.00  
Hearings: July 27, 2021 2 sessions  
July 28, 2021 1 session  
October 4, 2021 1 session

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Total Hearing Session Fees = \$ 10,575.00

The Panel has assessed \$5,287.50 of the hearing session fees to Claimant.

The Panel has assessed \$5,287.50 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Amy Jill Baranoff	-	Public Arbitrator, Presiding Chairperson
Andrew Daniel Levine	-	Public Arbitrator
Donald Francese	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Amy Jill Baranoff***

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Amy Jill Baranoff  
Public Arbitrator, Presiding Chairperson

**10/15/2021**

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

***Andrew Daniel Levine***

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Andrew Daniel Levine  
Public Arbitrator

**10/14/2021**

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

***Donald Francese***

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Donald Francese  
Non-Public Arbitrator

**10/15/2021**

\_\_\_\_\_  
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October 18, 2021

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