

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jackie A. Sterling

Case Number: 19-01267

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Nashville, Tennessee

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

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Jackie A. Sterling (“Claimant”): Steven D. Toskes, Esq., Klayman & Toskes, P.A., Boca Raton, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Robert E. Goldberg, Esq., Bressler, Amery & Ross, P.C., New York, New York.

*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: May 7, 2019.
Amended Statement of Claim filed on or about: September 1, 2019.
Claimant signed the Submission Agreement: May 7, 2019.

Statement of Answer filed by Respondent on or about: August 1, 2019.
Answer to Amended Statement of Claim filed on or about: October 4, 2019.
Respondent signed the Submission Agreement: July 25, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; failure to recommend risk management strategies for concentrated position; unsuitable investment strategy; misrepresentations and omissions; failure to supervise; fraud; constructive fraud; negligence and gross negligence; violation of FINRA rules and violation of the Securities Act of 1934.

In the Amended Statement of Claim, Claimant included additional facts and allegations against Respondent.

The causes of action relate to Respondent's covered call writing strategy on the United Parcel Service ("UPS") stock.

In the Statement of Answer and the Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and the Amended Statement of Claim, Claimant requested:

1. General and compensatory damages of approximately \$500,000.00;
2. Underperformance damages;
3. Cost of proceedings;
4. Attorneys' fees;
5. Punitive damages in an amount according to proof;
6. Interest at the legal rate on all sums recovered; and
7. Such other and further relief as the Panel deems just and appropriate.

In the Statement of Answer and Answer to the Amended Statement of Claim, Respondent requested:

1. An award dismissing the claim with prejudice in its entirety;
2. Assessment of the FINRA costs of this proceeding against Claimant; and
3. Expungement of this matter from the Central Registration Depository ("CRD") records of James Lynn Cagle.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 16, 2020, Claimant filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On December 22, 2020, Respondent filed a motion for expungement on behalf of unnamed party, James Lynn Cagle, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on March 18, 2021, so the parties could present oral argument and evidence on James Lynn Cagle's request for expungement.

Claimant did not participate in the expungement hearing.

The Panel reviewed James Lynn Cagle's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel 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 Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that James Lynn Cagle did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: James Lynn Cagle's testimony, James Lynn Cagle's BrokerCheck® Report; the settlement agreement; pleadings; and exhibits.

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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2031465) from registration records maintained by the CRD for unnamed Party James Lynn Cagle (CRD Number 1364768) with the understanding that, pursuant to Notice to Members 04-16, unnamed Party James Lynn Cagle 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 Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

In spite of advice by James Lynn Cagle (and the previous Financial Advisor), Claimant refused to diversify his portfolio. Ultimately, as an alternative, Claimant elected to utilize a covered call, Rampart Management Program ("Program") as a hedge. He was provided

with written and oral explanations, documents, and brochures explaining this option before he enrolled. He was then provided with a three-month waiting period (after he enrolled) before his enrollment became effective. And, during the many years in which he availed himself of the Program, he re-authorized, in writing, several times, his desire to continue in the Program. Further, Claimant acknowledged that Respondent had no involvement whatsoever in any of the investment decisions of the Program. Finally, the exhibits and records presented clearly indicate that this Program was profitable to Claimant, providing him with a net gain of over \$200,000.00. Thus, the allegations in the complaints were factually impossible or clearly erroneous and the allegations were false in regard to James Lynn Cagle.

FEES

Pursuant to the Code of Arbitration Procedure (“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
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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 firm that employed the associated person at the time of the event 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

Postponement Fees

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

November 16-19, 2020 postponement requested by Parties	=	WAIVED
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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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: November 11, 2019	1 session	
February 25, 2021	1 session	
	= \$	1,125.00
One (1) hearing session on expungement request @ \$1,125.00/session		
Hearing: March 18, 2021	1 session	

Total Hearing Session Fees	= \$	3,375.00
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The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$2,812.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Harvey R. Linder	-	Public Arbitrator, Presiding Chairperson
Stephen Earl Clark	-	Public Arbitrator
Daniel Mora	-	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.

Concurring Arbitrators' Signatures

Harvey R. Linder

Harvey R. Linder
Public Arbitrator, Presiding Chairperson

04/05/2021

Signature Date

Stephen Earl Clark

Stephen Earl Clark
Public Arbitrator

04/05/2021

Signature Date

Daniel Mora

Daniel Mora
Public Arbitrator

04/05/2021

Signature Date

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April 06, 2021

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