

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Salvatore Mansueto

Case Number: 19-02481

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Boston, Massachusetts

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Salvatore Mansueto: Jeremy L. Bartell, Esq., Bartell Law PLLC, Washington, District of Columbia.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: W. Preston Martin, Esq. and Sarah Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 2019.

Salvatore Mansueto signed the Submission Agreement: August 22, 2019.

Statement of Answer filed by Respondent on or about: September 26, 2020.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: September 26, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1926893.

In the Statement of Answer, Respondent objected to any request for compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 10, 2020, Claimant advised that the customer in Occurrence Number 1926893 was served with the Statement of Claim.

The Panel conducted a recorded, virtual hearing on November 19, 2020 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

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

On December 10, 2020, the Panel ordered Claimant to send notice to the customer that she has the option to provide FINRA with a response to the expungement request or whether she wishes to participate in this matter. The customer was given until January 8, 2021 to notify Claimant's counsel of her intentions and Claimant to advise FINRA by January 15, 2021 of the customer's response or lack thereof. On January 15, 2021, Claimant notified FINRA that the customer did not respond to the notice.

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

The Panel noted that the dispute related to Occurrence Number 1926893 was not settled and, therefore, there were no settlement documents to review.

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

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

AWARD

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

1. The Panel recommends the expungement of all references to Occurrence Number 1926893 from registration records maintained by the CRD for Claimant Salvatore Mansueto (CRD

Number 4216474) with the understanding that, pursuant to Notice to Members 04-16, Claimant Salvatore Mansueto 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 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

The customer complained to Respondent that Claimant had caused losses to her account and had engaged in excessive trading. A review of the customer’s monthly statements for the period of time covered by her claim shows that she did not suffer any losses and made a modest profit. The monthly statements also evidence that there were only two pairs of trades and the internal log show that Respondent inquired about the first pair and received a satisfactory explanation. Respondent engaged in a review of the customer complaint (which arose after Claimant left the firm) and found no evidence to support the customer’s claim. When the customer was advised of Respondent’s findings, she took no further action and remained a customer of Respondent. Thus, the Panel finds that the claims were false, and therefore clearly erroneous.

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 = \$ 1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Late Pre-hearing Cancellation Fees

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

May 11, 2020, cancellation requested by Parties = \$ 100.00

Total Late Pre-hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed the total late pre-hearing cancellation fees to Claimant.

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 Merrill Lynch, Pierce, Fenner & Smith Inc. 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 Arbitrators, including a pre-hearing conference with the Arbitrators, 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: December 9, 2019	1 session
June 9, 2020	1 session
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing Date: November 19, 2020	1 session
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Total Hearing Session Fees	= \$ 3,375.00

The Arbitrator has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Gene M. Bauer	-	Public Arbitrator, Presiding Chairperson
Jeffrey P. Petrucelly	-	Public Arbitrator
Tristan Nicholas Ostronic	-	Non-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

Gene M. Bauer

Gene M. Bauer
Public Arbitrator, Presiding Chairperson

01/20/2021

Signature Date

Jeffrey P. Petrucelly

Jeffrey P. Petrucelly
Public Arbitrator

01/21/2021

Signature Date

Tristan Nicholas Ostronic

Tristan Nicholas Ostronic
Non-Public Arbitrator

01/21/2021

Signature Date

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January 22, 2021

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