

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jeffrey Schneider

Case Number: 19-02729

vs.

Respondent
Axiom Capital Management, Inc.
CIBC World Markets Corp.

Hearing Site: New York, New York

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. Members

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Jeffrey Schneider: Tosh Grebenik, JD., Judex Law LLC, Broomfield, Colorado.

For Respondent Axiom Capital Management, Inc.: Eric L. Miller, Axiom Capital Management, Inc., New York, New York.

For Respondent CIBC World Markets Corp. (“CIBC”): Elizabeth R. Aylett, Esq., CIBC World Markets Corp., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 10, 2019.

Jeffrey Schneider signed the Submission Agreement: September 10, 2019.

Statement of Answer filed by Respondent Axiom Capital Management, Inc. on or about: November 4, 2019.

Axiom Capital Management, Inc. signed the Submission Agreement: November 5, 2019.

Statement of Answer filed by Respondent CIBC World Markets Corp. on or about: November 4, 2019.

CIBC World Markets Corp. signed the Submission Agreement: October 31, 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 Axiom Capital Management, Inc. took no position on Claimant’s expungement.

In the Statement of Answer, Respondent CIBC World Markets Corp. took no position on Claimant’s expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1061712, 1084353, 1089386 and compensatory damages in the amount of \$1.00 from each Respondents.

In the Statement of Answer, Respondent Axiom Capital Management, Inc. requested that Claimant pay all forum fees and costs, including any member surcharges, incurred in this proceeding.

In the Statement of Answer, Respondent CIBC World Markets Corp. requested that the Panel deny the request for \$1.00 in damages and that pursuant to Rule 13805(d) of the FINRA Code of Arbitration Procedure for Industry Disputes, assess against Claimant all forum fees and hearing sessions in this matter.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 29, 2021, Claimant advised that the customers in Occurrence Numbers 1061712, 1084353 and 1089386 (“customers”) were 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 April 30, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent Axiom Capital Management, Inc. participated in the expungement hearing and did not oppose the request for expungement.

Respondent CIBC World Markets Corp. did not participate in the expungement hearing and did not oppose the request for expungement.

The customers in Occurrence Numbers 1061712, 1084353 and 1089386 did not participate in the expungement hearing. The Arbitrator found that the customers had notice of the expungement request and hearing.

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

The Arbitrator was unable to review the settlement documentation related to Occurrence Numbers 1061712 and 1089386. The parties could not locate the settlement documents despite diligent efforts since the events occurred over 15 years ago. The Arbitrator considered the amount of payment made to any party to the settlements. Based on Claimant's testimony, the Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1084353. The parties could not locate the settlement document despite diligent efforts since the event occurred over 15 years ago. The Arbitrator considered the amount of payment made to any party to the settlement. Based on Claimant's testimony, the Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. Claimant contributed to the settlement amount, but the Arbitrator noted that the contribution by Claimant was a small fraction of the settlement amount in order to dispose of a nuisance lawsuit. The Arbitrator therefore found that expungement is still appropriate.

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

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 1089386 from registration records maintained by the CRD for Claimant Jeffrey Schneider (CRD Number 2089051) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jeffrey Schneider 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

The Claimant took no part in the transactions and was not the customer's registered broker. His partner at the time was the registered broker of the customer. Claimant was only named because his name appeared on the customer's account statement as a partner in the LLC. Both Claimant and his partner both had this complaint mentioned on their BrokerCheck® Reports. Moreover, this was initially not a customer claim, but originated two years after the transaction in question during an internal audit. The audit found that the bond should have been sold out of the error account and not the customer account (the bond had to be sold because the customer did not have the funds to pay for the bond in question.) The customer did not make the complaint and she followed Claimant's partner to his new firm after the incident.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1061712 from registration records maintained by the CRD for Claimant Jeffrey Schneider (CRD Number 2089051) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jeffrey Schneider 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 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 client was a wealthy sophisticated businessman with his risk profile as aggressive and the objective of short-term trading at CIBC as well as other broker dealers where he also maintained accounts. The account was a non-discretionary account, and the client had to direct the Claimant to make each and every trade by telephone. The Claimant could not initiate trades on his own. Thus, if there was excessive trading, it was the client himself who initiated that activity. The client was given a steep discount in the amount of fees charged because he signed on as "active" trader with many trades each day and week. At the time there was no alternative fee structure which only began later when CIBC acquired Merrill. Thus, the information in the complaint was false or clearly erroneous.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1084353 from registration records maintained by the CRD for Claimant Jeffrey Schneider (CRD Number 2089051) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jeffrey Schneider 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 factually impossible or clearly erroneous.

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

It was the heirs of the customer, and not the customer himself, who filed the complaint years after he passed away. The customer was a sophisticated investor of 15 years with experience in options and was looking for capital appreciation and short-term trading. He traded in a margin account which he opened, then let remain dormant for 4 months, and finally funded the account. After being funded, the customer traded in the account for only 2 months. After two months, he transferred his account to another firm. The customer was also given a discounted commission rate because he was an active trader. This was a non-discretionary account. Respondent CIBC investigated the complaint, found no wrongdoing and denied the claim. The heirs of the customer pursued the claim in the amount of approximately \$1.4 million for several years. CIBC finally settled for \$14,000.00 to dispose of a nuisance lawsuit and asked that Claimant contribute \$2,500.00. The information alleged in the complaint was therefore clearly erroneous.

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 = \$ 50.00

**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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondent Axiom Capital Management, Inc., and CIBC World Markets Corp. are each assessed the following:

Member Surcharge = \$ 150.00

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:

Four (4) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$ 200.00
Pre-Hearing Conferences: January 7, 2020	1 session
January 16, 2020	1 session
June 4, 2020	1 session
October 29, 2020	1 session

ARBITRATOR

Anna Lascar

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Sole 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.

Arbitrator's Signature

Anna Lascar

Anna Lascar
Sole Public Arbitrator

05/05/2021

Signature Date

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May 06, 2021

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