

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Paul W. Murphy

Case Number: 19-03104

vs.

Respondents
Calton & Associates, Inc.,
Newport Coast Securities, Inc., and
J.P. Turner & Company, LLC

Hearing Site: Orlando, Florida

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

REPRESENTATION OF PARTIES

For Claimant Paul W. Murphy (“Claimant”): Chad Weaver, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

For Respondent Calton & Associates, Inc. (“Calton”): Christopher A. Cokinis, Calton & Associates, Inc., Tampa, Florida.

For Respondent Newport Coast Securities, Inc. (“Newport”): Kevin Lee, New York, New York.

For Respondent J.P. Turner & Company, LLC (“J.P.”): Benjamin J. Biard, Esq., Winget, Spadafora Schwartzberg LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: October 16, 2019.
Claimant signed the Submission Agreement: October 14, 2019.

Calton and Newport did not submit a Statement of Answer or sign the Submission Agreement.

Statement of Answer filed by J.P. on or about: December 9, 2019.
J.P. signed the Submission Agreement: December 12, 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, J.P. Turner took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1510788, 1582362, and 1943585; compensatory damages in the amount of \$1.00 from Calton, J.P., and Newport, jointly and severally; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, J.P. Turner requested that Claimant’s request for \$1.00 in compensatory damages be denied and that all forum costs and fees be assessed against Claimant.

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.

Neither Calton nor Newport filed a properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and are bound by the determination of the Arbitrator on all issues submitted.

On August 6, 2021, Claimant advised that the customers in Occurrence Number 1510788 are deceased (“Mr. and Mrs. A”). Claimant also filed copies of death certificates for Mr. and Mrs. A. The same day, Claimant advised that the customers in Occurrence Numbers 1582362 and 1943585 (each a “Customer” and collectively, “Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notices”). Claimant also filed a copy of the FedEx tracking information available online for the Notices.

The Arbitrator conducted a recorded, in-person hearing on September 10, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Calton, Newport, and J.P. did not participate in the expungement hearing.

The Customers 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 also reviewed the settlement documentation related to Occurrence Number 194358, 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 Claimant contributed to the settlement amount in Occurrence Number 1943585.

The Arbitrator was unable to review the settlement documentation related to Occurrence Numbers 1510788 and 1582362. Based on Claimant's testimony, the Arbitrator considered the amount of payment made to any party to the settlements and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request. The Arbitrator noted that the Claimant did not contribute to the settlement amounts in Occurrence Numbers 1510788 and 1582362.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, 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 Numbers 1510788, 1582362, and 1943585 from registration records maintained by the CRD for Claimant Paul William Murphy (CRD Number 5132291) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul William Murphy 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.

Occurrence Numbers 1510788 and 1582362

Pursuant to Rule 13805 of the 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:

Occurrence Number 1510788

Mr. and Mrs. A were clients of the broker of record, for whom Claimant was working as a junior broker. Claimant was not involved in the broker of record's sale of the investment. The broker dealer for which Claimant worked at the time the claim was made decided to settle for approximately 38% of the amount alleged and Claimant was dismissed with prejudice, along with the broker dealer and the broker of record. Claimant was not a party to the settlement agreement and did not contribute any monies to the settlement amount. However, the broker dealer for which Claimant had worked at the time of the sale of the investment did not settle, and the claim was the subject of a FINRA arbitration hearing at

which the broker dealer at the time of the sale was found not liable and the claims were dismissed with prejudice.

Occurrence Number 1582362

The customer was a client of the broker of record, for whom Claimant was working as a junior broker. Claimant was not involved in the broker of record's sale of the investment. The broker dealer settled the claim for a nuisance amount (only 25% of the amount alleged) to avoid costs of litigation. Claimant was not a party to the settlement and did not contribute to the payment amount.

Occurrence Number 1943585

Pursuant to Rule 13805 of the 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:

In this complaint, the customer alleged unsuitability of REITs. However, Claimant testified that he met with the customer and her husband, and the customer specifically requested investments not correlated with the stock market that would generate income and growth. As a result, Claimant presented two REITs as investment options. The customer understood the investments and signed all appropriate disclosures required by the broker dealer. In addition, Claimant reviewed with the customer a FINRA document concerning the risks of REITs and had the customer sign it. The REITs were a small fraction of the customer's net worth, were suitable, and met the customer's goal of investments not correlated with the stock market that would generate income and growth. The customer indicated income and growth as her goals in the account opening document. The customer complained only about one of the REITs, which had stopped paying distributions to her. She had no complaint about the other REIT. When the customer called the broker dealer, the broker dealer sold the REIT for her to recoup part of the investment and additionally paid her to avoid litigation costs. As an independent contractor, Claimant had an indemnification agreement with the broker dealer, and the indemnification agreement required him to reimburse the broker dealer most of the amount paid to the Customer.

2. 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 = \$ 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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Calton, Newport, and J.P. are each assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

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

May 19, 2020, postponement requested by Claimant = \$ 50.00

July 29, 2021, postponement requested by Claimant = \$ 50.00

Total Postponement Fees = \$ 100.00

The Arbitrator has assessed the total postponement fees to Claimant.

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 @ \$50.00/session = \$ 200.00

Pre-Hearing Conferences: February 13, 2020 1 session
June 9, 2020 1 session
August 31, 2020 1 session
January 27, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00

Hearing: September 10, 2021 1 session

Total Hearing Session Fees = \$ 250.00

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.

ARBITRATOR

Gayle B. Carlson

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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

Gayle B. Carlson

Gayle B. Carlson
Sole Public Arbitrator

09/28/2021

Signature Date

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.

September 29, 2021

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