

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Thomas James Archer

Case Number: 20-00633

vs.

Respondent
Voya Financial Advisors, Inc.

Hearing Site: Houston, Texas

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

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimant Thomas James Archer (“Claimant”): Leonard J. Meyer, Esq., HooverSlovacek LLP, Houston, Texas.

For Respondent Voya Financial Advisors, Inc. (“Respondent”): Martin S. Schexnayder, Esq. and R. Turner Johnston, Esq., Winget, Spadafora & Schwartzberg, LLP, Houston, Texas.

CASE INFORMATION

Statement of Claim filed on or about: February 24, 2020.
Amended Statement of Claim filed on or about: May 7, 2020.
Claimant signed the Submission Agreement: February 21, 2020.

Statement of Answer filed on or about: April 14, 2020.
Respondent signed the Submission Agreement: April 14, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the following causes of action: breach of contract, defamation, and tortious interference with contract. The causes of action related to Claimant’s allegation that Respondent filed a false and defamatory Form U5 as part of his registration records maintained by the Central Registration Depository (“CRD”).

Unless specifically admitted 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, as amended, Claimant requested that the Panel award the following relief:

- (a) Expungement of the Form U5 filed by Respondent;
- (b) All of Claimant's pecuniary damages, approximately \$3,810,190.00 or that portion of Claimant's pecuniary damages in excess of such amount which are proven to the Panel's satisfaction;
- (c) Reasonable and necessary attorneys' fees, both pre-award and for any successful attempts to defend against or prosecute necessary modification of any arbitration award, as well as for any successful defense of any attempt to have a favorable award set aside in a court of competent jurisdiction, as well as all attorneys' fees Claimant incurs in successfully defending any favorable award and/or subsequent judgment, before all courts of appeal, state or federal;
- (d) Costs, including expert consultant fees;
- (e) Pre-award and post-award interest at the maximum legal rates and in the maximum legal amounts; and
- (f) Such other and further relief as the Panel deems just and appropriate, including general or special, legal or equitable.

In the Statement of Answer, Respondent requested that the Panel dismiss all of the claims and causes of action asserted against it in Claimant's Statement of Claim, reasonable attorneys' fees and costs incurred in defending this case, and such other and further relief, whether in law or equity, to which Respondent may be justly entitled.

At the hearing, Claimant requested \$4,495,295.00 in compensatory damages, attorneys' fees, costs and forum fees, and an Order from the Panel requiring Respondent to execute a Writing Agent Change form and a Broker Dealer Transfer Form.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 7, 2020, Claimant filed a Motion for Leave to File Amended Pleadings, which was unopposed by Respondent. In an Order dated June 17, 2020, the Panel granted Claimant's Motion for Leave to File Amended Pleadings.

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. Respondent is ordered to execute The Lincoln National Life Insurance Co. Lincoln Life & Annuity Company of New York Life Writing Agent Change of Agent form (Claimant’s Exhibit 61) and Prudential Broker Dealer Transfer Form (Claimant’s Exhibit 62) and return the forms to Claimant’s counsel of record within ninety (90) days from the date of the Award.
2. Claimant’s request for expungement of the Form U5 filed by Respondent is denied.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys’ fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=\$	2,000.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent assessed the following:

Member Surcharge	=\$	3,025.00
Member Process Fee	=\$	6,175.00

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: July 6, 2021		1 session
Two (2) pre-hearing sessions with the Panel @ \$1,400.00/session	=\$	2,800.00
Pre-Hearing Conferences: June 16, 2020		1 session
February 9, 2021		1 session
Ten (10) hearing sessions @ \$1,400.00/session	=\$	14,000.00
Hearings: July 12, 2021		2 sessions
July 13, 2021		2 sessions
July 14, 2021		2 sessions
July 15, 2021		2 sessions
July 16, 2021		2 sessions

Total Hearing Session Fees	=\$	17,250.00
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The Panel has assessed \$1,625.00 of the hearing session fees to Claimant.

The Panel has assessed \$15,625.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Elena Dilorio	-	Public Arbitrator, Presiding Chairperson
Jonathan Charles Day	-	Public Arbitrator
Bill Ray Haley	-	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

Elena Dilorio

Elena Dilorio
Public Arbitrator, Presiding Chairperson

08/02/2021

Signature Date

Jonathan Charles Day

Jonathan Charles Day
Public Arbitrator

08/09/2021

Signature Date

Bill Ray Haley

Bill Ray Haley
Non-Public Arbitrator

08/02/2021

Signature Date

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August 09, 2021

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