

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James Malcolm Faddy

Case Number: 20-00659

vs.

Respondent
SEG Capital, LLC

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. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant James Malcolm Faddy: Dochter Kennedy, MBA, J.D. and Kurt Zimmerman, Esq., Advisor Law, LLC, Westminster, Colorado.

Respondent SEG Capital, LLC (“SEG”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: February 26, 2020.

James Malcolm Faddy signed the Submission Agreement: February 26, 2020.

Respondent SEG Capital, LLC did not file a Statement of Answer and did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of a termination reference based on the defamatory nature of the entry from Claimant’s Form U5 registration records maintained by the Central Registration Depository (“CRD”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1536223, the CRD Form U5 amendments referencing the termination reference from his CRD record on

the basis that the statement is defamatory in nature, misleading, inaccurate, and/or erroneous, to include an amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary;" subsequent expungement of the Reason for Termination explanation on Claimant's CRD; expungement of the "Yes" answers to Questions 7B and 7F(2) of Claimant's Form U5, amending those "Yes" responses to "No;" and a deletion of any of the accompanying Internal Review and Termination Disclosure Reporting Pages in their entirety; damages in the amount of \$1.00 from Respondent for its part in contributing to Claimant's injury; and any other relief the Arbitrator deemed just and equitable.

Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

Respondent did not file a Statement of Answer or a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator determined that Respondent SEG was served with the Claim Notification letter dated February 26, 2020, by regular mail and certified mail, as evidenced by the signed signature cards on file/USPS tracking information available online, and the Overdue Notice (including the Statement of Claim) dated April 17, 2020, by regular and certified mail, as evidenced by the signed signature cards on file/USPS tracking information available online. The Arbitrator also determined that Respondent SEG was served with the Notification of Arbitrator dated June 24, 2020, by regular and certified mail, as evidenced by the signed signature card on file/USPS tracking information available online.

The Claim Notification letter notified Respondent SEG that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent SEG failed to register for the DR Portal. The Arbitrator determined that Respondent SEG is, therefore, bound by the Arbitrator's ruling and determination.

On April 17, 2020, Claimant filed a Motion to Bar Defenses Due to Untimely Answer ("Motion to Bar"), in which he asserted, among other things, that Respondent failed to file a Statement of Answer by the May 21, 2020, answer deadline. Respondent did not file a response.

On July 13, 2020, the Arbitrator conducted an initial telephonic pre-hearing conference and subsequently issued an Order dated July 14, 2020, in which he requested a Memorandum of Law regarding the eligibility of Claimant's claims as follows:

"Based upon the Chairperson's [single arbitrator] review of the Claimant's pleading [Statement of Claim] filed in this proceeding, as part of the Chairperson's preparation for conducting the Initial Prehearing Conference in this case, including but not limited to the allegations of fact set forth in numbered paragraph 3 through and including paragraph 14 on pages 2 and 3 of the foregoing Statement of Claim, and in view of the provisions of FINRA Rules 13206 (Time Limits)

and 13413 (Jurisdiction of Panel and Authority to Interpret the Code), the Chairperson requested, and the representative of the Claimant agreed, that Claimant file a Memorandum of Law addressing the eligibility of the claims for relief raised by the Claimant in its Statement of Claim. Claimant is requested to include a discussion of the applicable facts and relevant legal principles that are implicated in this case based upon the facial appearance from the foregoing paragraphs and any other facts that may be established at the hearing in this case as to whether more than six (6) years have elapsed from the occurrence(s) or event(s) giving rise to such claims. Claimant's counsel requested and the Chairperson agreed that such Memorandum shall be filed with FINRA on or before August 27, 2020."

On August 19, 2020, in compliance with the Arbitrator's July 14, 2020, Order, Claimant filed his Memorandum of Law on FINRA Rule 13206, in which he asserted, among other things, that FINRA Rule 13206 does not establish a bright-line rule regarding the "occurrence or event giving rise to the claim."

Respondent SEG did not appear at the evidentiary hearing. Upon review of the file, the Arbitrator determined that Respondent SEG received due notice of the hearing and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code. During the December 15, 2020, recorded videoconference evidentiary hearing, the Arbitrator heard oral argument on Claimant's Motion to Bar and issued an Order dated December 16, 2020, in which he granted Claimant's Motion to Bar with prejudice.

The Arbitrator's dismissal of the Statement of Claim pursuant to Rule 13206 of the Code is without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed pursuant to FINRA Rule 13206 of the Code, and therefore, Claimant James Malcom Faddy's (CRD Number 4958370) request for expungement of any and all references to Occurrence Number 1536223 from his CRD records is denied. The Arbitrator has made the above determination based on the following:

FINRA Rule 13206 of the Industry Code, provides that: "No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule." It is up to the Arbitrator to make the decision as to timeliness. It was determined that a decision regarding the timeliness of this claim should await conclusion of the merits hearing, in order to develop a complete factual record which, in the opinion of the Arbitrator, would afford Claimant the opportunity to present both factual and equitable considerations to make a determination on whether the action was timely commenced. Based upon the evidence submitted and circumstances in this case, even

assuming the Arbitrator has some discretion or flexibility to determine the event or occurrence from which the six years should be calculated, and regardless of whether the evidence presented by Claimant suggests or establishes that the initial entry, alleged as defamatory, occurred on November 15, 2010, any delay in commencing this action by Claimant in filing its February 26, 2020 complaint with FINRA was solely the result of Claimant's own decisions. Claimant's own decisions were based upon a relatively short period of voluntary travel to South America, and according to his testimony and own belief that the entries made on his U5 did not have sufficient consequential value to warrant filing an expungement claim. Further, it was only in the relatively recent period that Claimant determined it might be detrimental to have the entries remain on his U5 because of newer business opportunities in which he recently became engaged or is considering in the future.

In making this determination, the Arbitrator has taken into consideration: that FINRA Rule 13413 of the Code, provides that "the panel has the authority to interpret and determine the applicability of all provisions under the Code. Such interpretations are final and binding upon the parties;" well established, fundamental decisional determinations by the US Supreme Court that it is always the obligation of the court or other forum to determine its own jurisdiction; and, the fundamental principle that the grant of discretionary power is not unfettered, it should neither be arbitrary or capricious. To measure the period for eligibility in this case, as "arising today and every day, because the harm ... is continuous and ongoing" would render the six-year eligibility period set forth in FINRA Rule 13206 meaningless and to adopt such an approach is plainly a bridge too far.

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 a party, Respondent SEG Capital, LLC is 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(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 @ \$50.00/session = \$ 50.00

Pre-hearing Conference:	July 13, 2020	1 session	
One (1) hearing session on expungement request @		\$50.00/session	=\$ 50.00
Hearing Date:	December 15, 2020	1 session	
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Total Hearing Session Fees			=\$ 100.00

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

Joseph I. Liebman

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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

Joseph I. Liebman

Joseph I. Liebman
Sole Public Arbitrator

01/22/2021

Signature Date

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January 25, 2021

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