

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Christopher John Jacob

Case Number: 20-00778

vs.

Respondents
Transamerica Financial Advisors, Inc. and
Madison Avenue Securities, LLC

Hearing Site: St. Louis, Missouri

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

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Christopher John Jacob (“Claimant”): Brian Luther, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent Transamerica Financial Advisors, Inc. (“Transamerica Financial”): Susan D. Duff, Esq., Transamerica Financial Advisors, Inc., St. Petersburg, Florida.

For Respondent Madison Avenue Securities, LLC (“Madison Avenue”): Christina Z. Vourakis, Esq., Winget, Spadafora & Schwartzberg, LLP, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: March 9, 2020.

Amended Statement of Claim filed on or about: November 1, 2020.

Second Amended Statement of Claim filed on or about: November 5, 2020.

Claimant signed Submission Agreements: March 6, 2020 and November 6, 2020.

Statement of Answer filed by Transamerica Financial on or about: April 22, 2020.

Amended Statement of Answer filed by Transamerica Financial on or about: July 28, 2020.

Transamerica Financial signed the Submission Agreement: March 27, 2020.

Statement of Answer to Amended Statement of Claim filed by Madison Avenue on or about: December 23, 2020.

Madison Avenue Signed the Submission Agreement on February 18, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, 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, as amended, Transamerica Financial took no position on Claimant's expungement request.

In the Statement of Answer to the Amended Statement of Claim, Madison Avenue did not oppose Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of Occurrence Number 1631310 and an award of compensatory damages in the amount of \$1.00.

In the Statement of Answer, as amended, Transamerica Financial requested that Claimant pay all forum fees in connection with this matter.

In the Statement of Answer to the Amended Statement of Claim, Madison Avenue requested that any request for monetary damages against it be denied and that all forum costs and fees be assessed against Claimant.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 28, 2020, Transamerica Financial filed a Motion for Leave to File Amended Answer, to which no response was filed. In an Order dated August 10, 2020, the Arbitrator granted the motion.

On August 12, 2020, Claimant advised that the customer in Occurrence Number 1631310 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on October 14, 2020, so the parties could present oral argument and evidence on Claimant's request for expungement.

Transamerica Financial participated in the expungement hearing and orally moved to dismiss the case against it ("Motion to Dismiss"), asserting that it was not the proper party to the case. After oral arguments, the Arbitrator granted the Motion to Dismiss on the record and adjourned the expungement hearing.

The Customer did not participate in the expungement hearing.

In an Order dated the same day, the Arbitrator confirmed his decision on the Motion to Dismiss and further granted Claimant leave to file an Amended Statement of Claim, naming a proper party. Claimant filed an Amended Statement of Claim on November 1, 2020 and a Second Amended Statement of Claim on November 5, 2020.

On January 19, 2021, Claimant advised that the Customer was served with notice of the date and time of the second expungement hearing.

On January 29, 2021, the Customer submitted a written response opposing Claimant's request for expungement.

The Arbitrator conducted a second recorded, telephonic hearing on February 18, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Madison Avenue participated in the expungement hearing and, as stated in the Statement of Answer to the Amended Statement of Claim, did not oppose the request for expungement.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1631310, 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 the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant contributed the entire settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, the pleadings, and the documents filed by the parties in accordance with the Arbitrator's Orders.

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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1631310 from registration records maintained by the CRD for Claimant Christopher John Jacob (CRD Number 1501352) with the understanding that, pursuant to Notice to Members 04-16, Claimant Christopher John Jacob 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 false.

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

The Arbitrator finds, based on the testimony and evidence presented, that the claims, allegations, and information reflected in Occurrence Number 1631310 are false. Claimant described the basis and reasons for each of his recommendations to the Customer in great detail in (1) his Amended Statement of Claim; (2) his October 2012 written statements provided to the Missouri Secretary of State, Securities Division and the Missouri Department of Insurance, regarding the Customer’s allegations; and (3) his testimony.

The Arbitrator finds Claimant's various statements to be true and credible. His recommendations and actions taken on the Customer’s behalf were suitable and in her best interests, and the investments were made with her knowledge and approval. Important, too, is that the Customer’s overall investments, including her variable annuities, generally performed well while managed by Claimant and that the only losses the Customer appears to have incurred were limited to surrender charges generated solely as a result of her having cancelled most of her variable annuities before one year had elapsed since their purchase, at the prompting of another broker (who then placed her funds into fixed annuities). In fact, although the Customer’s allegation criticized the variable annuities purchased through Claimant as a whole, she did not ultimately transfer at least one sizable annuity to the other broker and did not, likewise, move her other non-variable annuity holdings in the account. Also telling is that, in her October 2, 2012 written complaint to the Missouri Department of Insurance, the Customer admitted that, after meeting the other broker at a seminar, "He called me but I assured him my variable annuities were safe but he talked me into a meeting." Moreover, Claimant testified that, before the Customer’s meetings with the other broker, she had never complained or indicated any dissatisfaction with Claimant's performance. Nothing in the record indicates otherwise. No government agency has taken any enforcement action as a result of the Customer’s allegation, and no litigation has resulted.

Claimant was also unequivocal in explaining that his settlement with and consequent payment to the Customer rested solely on his desire to curb attorneys' fees, time, and expense in an effort to put the matter behind him, while nonetheless denying any liability.

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
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Transamerica Financial and Madison Avenue are each assessed the following:

Member Surcharge Fee = \$ 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:

Two (2) pre-hearing session @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: July 1, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 100.00
Hearing: October 14, 2020 1 session
February 18, 2021 1 session

Total Hearing Session Fees = \$ 150.00

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

Robert J. Gryzmala - 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

Robert J. Gryzmala

Robert J. Gryzmala
Sole Public Arbitrator

03/02/2021

Signature Date

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March 02, 2021

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