

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Wade Theodore Papapanagiotu

Case Number: 20-00945

vs.

Respondent

John Thomas Financial

Hearing Site: New York, New York

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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 administered under the Special Proceeding option for simplified cases.

**REPRESENTATION OF PARTIES**

For Claimant Wade Theodore Papapanagiotu: Tosh D. Grebenik, JD, FA Expungement, LLC, Denver, Colorado.

Respondent John Thomas Financial did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: March 23, 2020.

Wade Theodore Papapanagiotu signed the Submission Agreement: March 23, 2020.

John Thomas Financial did not file a Statement of Answer or sign the Submission Agreement.

**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”).

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1875001 and compensatory damages in the amount of \$1.00.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

Respondent did not file 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 Panel on all issues submitted.

On October 16, 2020, Claimant advised that the customer in Occurrence Number 1875001 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 December 15, 2020 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

The customer also 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 documents, considered the amount of payments 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.

The Arbitrator noted Claimant paid the settlement amount as the claim was against the Claimant alone. However, expungement is still warranted as Claimant was advised by his counsel that the defense costs would exceed the settlement amount. The settlement agreement recites that the settlement was a “nuisance value on advice of counsel.” As Claimant was personally responsible for the defense costs, win or lose, this settlement should not be considered a negative. Moreover, the customer’s release of the Claimant also covered two other account which were not in the underlying dispute. The Arbitrator found this was a global nuisance settlement designed to avoid litigation expenses.

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

### **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. Respondent is liable for and shall pay to Claimant the sum of \$1.00 in compensatory damages.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1875001 from registration records maintained by the CRD for Claimant Wade Theodore Papapanagiotu (CRD Number 2933979) with the understanding that, pursuant to Notice to Members 04-16, Claimant Wade Theodore Papapanagiotu 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, 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:

The customer was a sophisticated businesswoman, a founder and half-owner and operator (with her husband) of a successful software company. She had a seven-figure net worth, a six-figure annual income, several investment accounts with various brokerage firms, and substantial retirement accounts.

The account in question was opened at Respondent John Thomas Financial (“the Firm”) in 2010 for the purposes of speculation and aggressive trading on a short time horizon. The customer and her husband also maintained two other accounts at the Firm.

The customer’s trading account was non-discretionary and intended to “mirror” a similar trading account maintained by her husband who introduced her to the Firm and had trading authority over her account. The customer’s trading account was initially funded by the transfer of “penny stocks.”

In 2010 and 2011, Claimant recommended the purchase of Ford Co. warrants to the customer and her husband. The customer agreed. The first two such trades were profitable; the third closed “out-of-the-money” and lost.

The customer’s husband made the same three Ford-warrant trades in his “mirror account” with the same results.

Neither the customer nor her husband made any complaint while Claimant was at the Firm.

The Claimant left the Firm in March 2013 and had no further contact with the customer or her husband. (Claimant was subject to a non-compete agreement with the Firm.)

The Firm was expelled from the securities industry in October 2013.

In March 2016, the customer, represented by Cold Spring Advisory Group (a non-attorney representative firm), filed the \$50,000 FINRA arbitration claim against Claimant alone; no firm was sued.

The allegations were fiduciary breach and unsuitable transactions, principally based on the Ford-warrant trades.

The customer's husband, whose "mirror account" at the Firm had made the same trades with the same results, did not make any claim.

In 2017, Claimant settled the customer's case for \$10,000, paid over-time: "nuisance value on advice of counsel". The settlement release also covered the other two Firm accounts which were not in suit.

Claimant had been advised by counsel that the hearing fees and costs would be "a lot more" than \$10,000. As no firm was involved in the case, Claimant would have had to bear the entire defense cost, personally.

On this record, the Arbitrator determined the claims of fiduciary breach and unsuitability are clearly erroneous within the meaning of FINRA Rule 2080(b)(1)(A), and, therefore expungement is recommended. The account was non-discretionary. The customer was sophisticated; wealthy; well-provided for by other investment accounts; interested in short-term speculation; advised on the nature and prospects of the contested warrant trades which cannot be said to have been inappropriate for an aggressive and speculative trading account; and, was fully informed when she approved all trades in advance and made no complaint for several years. Thus, the Arbitrator found there was no fiduciary breach or unsuitable trading.

3. 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
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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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent John Thomas Financial is assessed the following:

Member Surcharge	= \$	150.00
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#### **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 sessions with a single Arbitrator @ \$50.00/session

Pre-hearing Conferences:	July 13, 2020	1 session		
	August 6, 2020	1 session	=\$	100.00
One (1) hearing session on expungement request @		\$50.00/session	=\$	50.00
Hearing Date:	December 15, 2020	1 session		
			=\$	150.00
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Total Hearing Session Fees				

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**

Brian John Gallagher

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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**

***Brian John Gallagher***

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Brian John Gallagher  
Sole Public Arbitrator

**01/15/2021**

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Signature Date

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January 15, 2021

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