

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brian Michael Brennan

Case Number: 20-01069

vs.

Respondent
MML Investors Services, LLC

Hearing Site: Los Angeles, California

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 Brian Michael Brennan (“Claimant”): Tosh Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent MML Investors Services, LLC (“Respondent”): Elliott J. Stein, Esq., Stevens & Lee, Lawrenceville, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: April 1, 2020.
Claimant signed the Submission Agreement: March 31, 2020.

Statement of Answer filed by Respondent on or about: June 3, 2020.
Respondent signed the Submission Agreement: June 12, 2020.

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, Respondent did not oppose Claimant’s expungement request but opposed any attempt by Claimant to receive any relief other than expungement, including a request for nominal damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2037139 pursuant to a finding that the claim, allegation, or information is factually impossible and clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A) and that the claim, allegation, or information is false, pursuant to FINRA Rule 2080(b)(1)(C); and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested that all forum fees and costs associated with this proceeding be assessed against Claimant, in accordance with FINRA Rule 13805(d).

During 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.

On October 16, 2020, Claimant advised that the customer in Occurrence Number 2037139 ("Customer") was served with the Statement of Claim and with notice of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 7, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The Customer participated in the expungement hearing. The Arbitrator noted that the Customer testified on Claimant's behalf at the expungement hearing and stated that she was in favor of Claimant's request for expungement.

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 noted that the dispute related to Occurrence Number 2037139 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; the Customer's testimony; and Claimant's exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 Number 2037139 from registration records maintained by the CRD for Claimant Brian Michael

Brennan (CRD Number 5964207) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Michael Brennan 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

All of the evidence presented shows that the Customer agreed with Claimant’s recommendation to cash in her variable annuity and invest in another variable annuity that had better guaranteed income and substantially better principal protection. The new contract, which was provided by Claimant, his co-worker, and a compliance associate, clearly, explained the details of the transaction, including all fees, expenses, and surrender charges.

After the new annuity was purchased, the Customer’s estate planning attorney referred her to a financial advisor. When the Customer discovered that the financial advisor had given her bad advice, she withdrew her complaint and remained a customer of Claimant and Respondent. The Arbitrator finds that the variable annuity surrender charges were clearly explained to the Customer and she understood them. For this reason, expungement of Claimant’s CRD records is appropriate because the allegation that the variable annuity surrender charges were not sufficiently explained to her is clearly erroneous (FINRA Rule 2080(b)(1)(A)) and false (FINRA Rule 2080(b)(1)(C)).

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 is assessed the following:

Member Surcharge = \$ 150.00

Late Pre-hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

July 28, 2020, cancellation requested by Claimant = \$ 100.00

Total Late Pre-hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed the total late pre-hearing cancellation 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:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session = \$ 50.00
Pre-hearing Conference: July 29, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: January 7, 2021 1 session

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

Anita Rae Shapiro

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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

Anita Rae Shapiro

Anita Rae Shapiro
Sole Public Arbitrator

01/20/2021

Signature Date

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January 21, 2021

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