

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joseph Jon Depasquale

Case Number: 20-01233

vs.

Respondent
American Capital Partners, 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

REPRESENTATION OF PARTIES

For Claimant Joseph Jon Depasquale: Thomas P. McEvoy, Esq., and Michael H. Ference, Esq., Sichenzia Ross Ference LLP, New York, New York.

For Respondent American Capital Partners, LLC: John Gardini, CCO., American Capital Partners, LLC, Hauppauge, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 16, 2020.

Joseph Jon Depasquale signed the Submission Agreement: April 16, 2020.

Statement of Answer filed by Respondent on or about: May 27, 2020.

American Capital Partners, LLC signed the Submission Agreement: May 28, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1663725; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent did not set forth a specific relief request.

At 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 August 6, 2020, Claimant advised that the customer in Occurrence Number 1663725 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On November 11, 2021, the Customer submitted a written opposition to Claimant’s expungement request.

On November 11, 2021, the Customer submitted a Motion for Continuance of the expungement hearing scheduled for December 8, 2021. On December 2, 2021, Claimant submitted an opposition to the motion and stated that Respondent joined in the opposition. By Order dated December 3, 2021, the Arbitrator denied the Customer’s motion for continuance. The Order stated that: The Customer may submit to FINRA and serve on the parties any additional documents relating to Claimant's expungement request no later than January 17, 2022, and Claimant may submit a response to such documents no later than January 27, 2022.

The Arbitrator conducted a recorded in-person hearing on December 8, 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 did not participate in the expungement hearing but opposed the expungement request.

The Customer did not submit any additional documents by the January 17, 2022 deadline. Claimant submitted a post-hearing brief in support of his expungement request on January 27, 2022.

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 1663725, 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.

The Arbitrator noted that Claimant contributed the entire settlement amount. However, the Arbitrator recommends expungement because in the indemnity provision in Claimant’s Registered Representative Agreement with Respondent, Claimant was required to indemnify

and hold Respondent harmless as part of the settlement and, as such, contribute the full amount to the settlement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's testimony; the testimony of Respondent's President and co-founder; Claimant's BrokerCheck® Report; and the exhibits, including the pleadings in the underlying arbitration case, and the Customer's opposition to the expungement request.

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. The Arbitrator recommends the expungement of all references to Occurrence Number 1663725 from registration records maintained by the CRD for Claimant Joseph Jon Depasquale (CRD Number 4261826) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joseph Jon Depasquale 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 Customer in the underlying dispute (occurrence No. 1663725) that was subject of the arbitration brought against Respondent and Claimant, alleged "breach of fiduciary duties, misrepresentation" as reported in Claimant's FINRA BrokerCheck® Report. More specifically, the Customer alleged in her opposition to Claimant's expungement request that Claimant was "grossly negligent and fraudulent in his investment management" of the accounts and committed "fraud" in selling the Customer a "foreign bond for which he received a 50% commission".

The evidence indicates that these allegations are false.

The credible testimony of Claimant, and the President and co-founder of Respondent, on behalf of Respondent, as well as the facts outlined in Claimant's Post-Hearing Brief in support of his request for expungement, dated January 27, 2022, support the following:

The Customer opened four non-discretionary accounts with Claimant and the Customer had full trading authorization over all four accounts. The new account forms completed for each account reflected that the Customer had: 1) 20 years of investment experience; 2) an annual income of \$100,000-\$199,999; 3) a net worth of \$1 million to \$1,999,999; 4)

liquid assets of \$500,000-\$999,999; and 5) investment objective of “speculation” – the highest level of risk available.

Despite receiving trading confirmations, monthly account statements and routinely accessing their accounts online, the Customer never once contacted Claimant advising that their investment objective was not accurately listed or that they wished to change it from “Speculation”, nor did they ever contact Claimant or anyone at Respondent and indicate that any of the trades or other activity in the accounts were not authorized or otherwise inconsistent with their investment objectives and risk tolerance.

The President of Respondent further testified, on behalf of Claimant, that the Customer had not once complained about any activity in their accounts or Claimant’s handling of same. When Claimant and Respondent first learned of the Customer’s complaint upon the filing of the arbitration of the underlying dispute six months after the accounts were closed, Respondent conducted an investigation and found no evidence of wrongdoing by Claimant or itself. Respondent concluded that the Customer’s complaint had no merit.

Notwithstanding its conclusion, Respondent settled the arbitration for \$115,000.00 based on the anticipated loss of time and productivity of management and costs of defending the arbitration; its belief that it would not be treated fairly in the Customer’s home state of Arkansas based on the denial of Respondent’s motion for a more definite Statement of Claim; and empathy toward the Customer. The decision to settle was made at the executive level and Claimant had no say in whether to settle the matter. Respondent denied any liability as part of the settlement.

Because of the indemnity provision in Claimant’s Registered Representative Agreement with Respondent, Claimant was required to indemnify and hold Respondent harmless as part of the settlement and, as such, contribute the full amount to the settlement. Respondent took no disciplinary or adverse employment action against Claimant in connection with this matter and no regulator, such as FINRA or Securities and Exchange Commission, investigated either party concerning the complaint.

In opposition to Claimant’s expungement request, the Customer alleges that Claimant sold to her a “foreign bond” for which he allegedly received a 50% commission. Neither Claimant nor Respondent ever sold a “foreign bond” to the Customer. After expressing interest in investing in private placement in Chinese companies, prompting Claimant to recommend a private placement in China Agricorn, Inc. (“Agricorn”), the Customer did choose to invest \$25,000 each in a private placement in Agricorn. In connection with the offering, the Customer received a term sheet and private placement memorandum (“PPM”) disclosing various risks associated with the investment and completed an investor questionnaire and subscription agreement verifying their suitability for the investments.

The PPM further disclosed that the “Placement Agent” (i.e., Respondent) would receive a cash commission equal to nine percent (9%) of the gross proceeds it received from the sale of the investment, and a non-accountable expense reimbursement equal to 2% of the gross proceeds it received from the sale of the investment. As Claimant and Respondent’s representative testified, Claimant received a four percent (4%) commission

for his sale of the private placement to the Customer, amounting to no more than a total of \$2,000.00.

Accordingly, Claimant was neither grossly negligent nor fraudulent with respect to the handling of the Customer's accounts, and these allegations are false. Furthermore, the Customer's allegations that Claimant sold her a "foreign bond" for which he received a "50% commission" are also false.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent American Capital Partners, LLC is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

September 9, 2020, postponement requested by Claimant. = \$ 50.00

Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fees to Claimant.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

September 9, 2020, cancellation requested Claimant. = \$ 600.00

Total Last-Minute Cancellation Fees = \$ 600.00

The Arbitrator has assessed the total last-minute 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$	100.00
Pre-Hearing Conferences: July 24, 2020	1 session	
February 11, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: December 8, 2021	1 session	

Total Hearing Session Fees	= \$	150.00
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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

Michele S. Riley

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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

Michele S. Riley

Michele S. Riley
Sole Public Arbitrator

02/04/2022

Signature Date

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February 07, 2022

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