

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Raymond Walter Robert Borota, II

Case Number: 20-01263

vs.

Respondents

Emmett A. Larkin Co., Inc.,
Salomon Grey Financial Corp., and
Pacific Cortez Securities, Inc.

Hearing Site: Dallas, Texas

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 Raymond Walter Robert Borota, II (“Claimant”): Jennifer P. Farrar, Esq., Farrar Law PLLC, Tomball, Texas.

Respondent Emmett A. Larkin Company, Inc. (“Emmett A. Larkin”), Salomon Grey Financial Corporation (“Salomon Grey”), and Pacific Cortez Securities Incorporated (“Pacific Cortez”), collectively, “Respondents” did not appear.

CASE INFORMATION

Statement of Claim filed on or about: June 4, 2020.

Claimant signed the Submission Agreement: May 29, 2020.

Emmett A. Larkin, Salomon Grey, and Pacific Cortez 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 Numbers 1323825, 1252112, and 163170; an award of compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondents did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code").

On November 13, 2020, Claimant advised that the customer in Occurrence Number 1323825 was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On August 18, 2021, Claimant advised that the registered agent of the customer in Occurrence Number 1252112 was served with the Statement of Claim and notice of the date and time of the second expungement hearing ("Notice"). Further, Claimant advised that the customer in Occurrence Number 1323825 was served with the Statement of Claim and notice of the date and time of the second expungement hearing ("Second Notice"). Finally, Claimant filed a Declaration that the customers in Occurrence Number 163170 are deceased.

The Arbitrator conducted a recorded, telephonic hearing on December 2, 2020, so the parties could present oral argument and evidence on Claimant's request for expungement. Neither Respondents nor any of the customers participated in this expungement hearing. The Arbitrator found that the customers did not have sufficient notice of the expungement request and hearing.

The Arbitrator conducted a second recorded, telephonic hearing on August 24, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement. Neither Respondents nor any of the customers participated in this second expungement hearing. The Arbitrator found that the customers did have sufficient notice of the expungement request and this second expungement 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 occurrences in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1323825 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement of Occurrence Number 1323825, the Arbitrator relied upon the following documentary or other evidence: exhibits and pleading submitted by Claimant and Claimant's testimony.

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 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. Claimant's claim for \$1.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number 1323825 from registration records maintained by the CRD for Claimant Raymond W. Robert Borota, II (CRD Number 1950804) with the understanding that, pursuant to Notice to Members 04-16, Claimant Raymond W. Robert Borota, II 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

The customer complaint was a superficial demand letter that was denied by Claimant's then employer and there was no follow up by the customer, no payment made to the customer by Claimant or his employer, and no settlement agreement. Claimant testified that the allegations in the letter were false and I found the testimony credible and therefore find the customer complaint to be false and/or clearly erroneous and therefore recommend its expungement.

3. Claimant's request for expungement of Occurrence Numbers 1252112 and 163170 from his registration records maintained by the CRD is denied. The Arbitrator has provided the following explained decision:

I found Claimant's testimony to be candid and credible; however, as to the occurrence numbers as to which I am not recommending expungement, the record is simply inadequate to conclude that the customer allegations in those cases were false or clearly erroneous.

As to Occurrence Number 1252112, Claimant testified that the transaction alleged by customer to be unauthorized was, in fact, authorized, but Claimant acknowledged that it was not authorized by the person who was the principal customer contact for the account. The fact that the customer waited until a number of days after the confirmation was sent to customer and the stock had declined in value to claim that it was unauthorized would likely have been persuasive to me in

an arbitration on the merits. The fact that Claimant did, directly or indirectly, contribute to the settlement, that Claimant presented only a portion of the actual settlement agreement (which reflects a larger payment by Claimant than reflected in the complaint disclosure), and that customer may actually have believed the trade to be unauthorized, combine to make me unable to conclude that the customer's allegations were false and/or clearly erroneous.

As to Occurrence Number 163170, Claimant testified that the customers had no complaints regarding his services until after the customers went to a new broker and suffered substantial losses when the securities recommended by Claimant were sold. Claimant further testified that it was primarily the customer's wife that was unhappy with the recommendations. While I have no reason to doubt Claimant's testimony, given the large amount of the settlement, the notation in the disclosure that there was an individual contribution (Claimant denied any individual contribution), the absence of the settlement agreement, and Claimant's understandable inability to recall many years later the details of the portfolio he recommended, I cannot conclude that the customers' allegations of unsuitability were false and/or clearly erroneous.

4. 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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents are each assessed the following:

Member Surcharge Fee	= \$	150.00
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Late Pre-Hearing Cancellation Fees

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

October 2, 2020, cancellation requested by Claimant	= \$	100.00
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Total Late Pre-Hearing Cancellation Fees	= \$	100.00
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The Arbitrator has assessed the total late pre-hearing cancellation fees to Claimant.

Postponement Fees

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

February 12, 2021, postponement requested by Claimant	= \$	50.00
May 24, 2021, postponement requested by Claimant	= \$	50.00
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Total Postponement Fees	= \$	100.00

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:

February 12, 2021, cancellation requested by Claimant	= \$	600.00
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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:

One (1) pre-hearing session @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: October 19, 2020	1 session	
Two (2) hearing sessions on expungement request @ \$50.00/session	= \$	100.00
Hearing Dates: December 2, 2020	1 session	
August 24, 2021	1 session	
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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

Eric Ross Cromartie

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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

Eric Ross Cromartie

Eric Ross Cromartie
Sole Public Arbitrator

10/04/2021

Signature Date

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.

October 04, 2021

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