

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Andrew Ryan Goldberg

Case Number: 20-01292

vs.

Respondent
MetLife Securities, Inc.

Hearing Site: Boca Raton, Florida

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 Andrew Ryan Goldberg: Daniel D'Costa, Esq., D'Costa Law P.C., Hicksville, New York.

For Respondent MetLife Securities, Inc. ("MetLife"): Martin Harris, Esq., Harris & Affiliates, Ltd., Chicago, Illinois.

CASE INFORMATION

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

Andrew Ryan Goldberg signed the Submission Agreement: June 9, 2020.

Statement of Answer filed by Respondent on or about: August 7, 2020.

MetLife signed the Submission Agreement: August 7, 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 Numbers 1738551, 1651419 and 1546077; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested the denial of Claimant's request for \$1.00 in compensatory damages, and the assessment of all forum and session fees for this proceeding against Claimant.

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 January 14, 2021, Claimant advised that the customers in Occurrence Numbers 1738551 ("Customer A") and 1651419 ("Customer B") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator noted that on January 15, 2021, Claimant filed a notice reflecting that he was unable to serve the customer in Occurrence Number 1546077 ("Customer C") with the Statement of Claim and notice of the date and time of the expungement hearing because Claimant was not in possession of any records related to Customer C. Claimant also submitted an Affidavit from Respondent MetLife reflecting that MetLife was also not in possession of any records related to Customer C.

The Arbitrator conducted a recorded, telephonic hearing on February 11, 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, took no position on the request for expungement.

Customers A, B and C did not participate in the expungement hearing. The Arbitrator found that Customers A and B 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1738551 and 1651419, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

As to Occurrence Number 1546077, the Arbitrator noted that there was no settlement document to review based on Claimant's January 15, 2021, notice that Claimant did not have, and had

been unable to obtain any documentation related to Customer C or the settlement with that customer.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the Statement of Answer; the testimony of Claimant; Claimant's 99 pages of unlabeled hearing exhibits, which consisted of Claimant's five-page Pre-Hearing Brief, and the remainder consisting of Respondent's 94 pages of notes, letters, emails and other documents.

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 request for expungement of Occurrence Number 1546077 from his registration records maintained by the CRD is denied due to a lack of sufficient information to make an expungement determination.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1738551 and 1651419 from registration records maintained by the CRD for Claimant Andrew Ryan Goldberg (CRD Number 3160832) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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; and,

The claim, allegation, or information is false.

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

As to Occurrence Number 1738551:

This customer complaint arises in connection with the purchase of an annuity contract in which Customer A named his nephew, rather than his son, as the sole beneficiary. What followed were allegations that Customer A was unable to read the contract, and that he was also confused about what he was purchasing. These allegations were primarily raised not by Customer A himself, but by Customer A's son. Exhibits contained on pages 9-27 of 99 contain the relevant documents related to this occurrence. Exhibit pages 14-15 of 99 are a letter from Customer A's son to Respondent's representative stating, among other things, that "he [Customer A] was not in a clear state of mind so soon after my stepmother's death", and that "he [Customer A] has absolutely no recollection of any conversation about investing

his money with Andrew Goldberg [Claimant], or anyone else for that matter." The exhibit on page 21 of 99 is a response as part of the Respondent's investigation into this matter which, among other things, states that "I received a call from customer's son, I told him that I had spoken to his father, and he stated that his father had changed his mind and no longer wanted the annuity." After numerous communications between Respondent and Customer A or his son, Respondent agreed to refund Customer A's money. Exhibit page 25 of 99 is the Settlement Agreement memorializing the refund. Importantly, Claimant played no role in the settlement other than to provide details about his communications with Customer A. Based on a review of the notes contained in the exhibits and Claimant's credible testimony, it is clear that Customer A's purchase of the annuity contract was the result of his being unclear about the action he was taking, which was not the result of any action or inaction on the part of Claimant. Therefore, Claimant's request for expungement of this occurrence is granted because the claims were clearly erroneous and false.

As to Occurrence Number 1651419:

This complaint was filed by Customer B and related to the purchase of an annuity contract using funds from another annuity contract. The complaint centers around whether Customer B clearly understood that she would be switching from a fixed annuity to a variable annuity which had certain features she apparently was looking for. After the variable annuity contract was issued, Customer B then realized that she had purchased a variable annuity. She was not satisfied with that outcome and began numerous communications with Respondent and the issuer of the annuity contract. A review of documents contained in Claimant's Exhibits starting with pages 31-53 of 99, reveals copies of numerous letters, emails, and notes regarding this situation. It was clear after reviewing these documents that there was a misunderstanding by Customer B about what she was purchasing. As a result, and in the interests of goodwill, the issuer of the variable annuity contract took steps necessary to restore Customer B to her position prior to the purchase of the variable annuity. Exhibit pages 77-90 of 99 discuss the steps taken to reverse the transaction, and includes a formal Settlement Agreement between the issuer and Customer B. Further review of the notes contained in the exhibits noted, and based on Claimant's credible testimony, it was clear that this situation was the result of a misunderstanding by Customer B about what she was purchasing, and not through any actions or inactions on the part of Claimant. Therefore, Claimant's request to have this occurrence expunged from his CRD is granted because the claims were clearly erroneous and false.

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

*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 MetLife is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

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

December 2, 2020, postponement requested by Claimant = WAIVED

Total Postponement Fee = WAIVED

The Arbitrator has waived the entire postponement fee.

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:

December 2, 2020, cancellation requested by Claimant = \$ 600.00

Total Last-Minute Cancellation Fee = \$ 600.00

The Arbitrator has assessed the entire last-minute cancellation fee 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: October 13, 2020 1 session
December 2, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: February 11, 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

Mark A Bilawsky

-

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

Mark A Bilawsky

Mark A Bilawsky
Sole Public Arbitrator

02/19/2021

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.

February 22, 2021

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