

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Lori Reisman Sackler

Case Number: 20-01317

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

Hearing Site: Jersey City, New Jersey

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 Lori Reisman Sackler: Lawrence R. Gelber, Esq., Lawrence R. Gelber, Attorney at Law, Brooklyn, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: W. Preston Martin, Esq. and Patrick Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Amended Statement of Claim filed on or about: May 15, 2020.
Lori Reisman Sackler signed the Submission Agreement: April 22, 2020.

Statement of Answer filed by Respondent on or about: June 30, 2020.
Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: June 29, 2020.

CASE SUMMARY

In the Amended 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested expungement of Occurrence Number 1301551; and compensatory damages of at least \$1.00 exclusive of expenses including but not limited to attorneys' fee.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

At the close of 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.

The original Statement of Claim was filed on April 27, 2020. An Amended Statement of Claim was filed on May 15, 2020. The Statement of Claim filed on April 27, 2020 was not served on the Respondent and therefore was not considered by the Arbitrator.

On September 8, 2020, Claimant advised that the customer in Occurrence Number 1301551 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 participated in the expungement hearing and did not oppose the request for expungement.

The customer 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 further noted that according to Claimant's BrokerCheck® Report, the individual contribution amount of \$50,000.00 is the full amount of the settlement, however, Claimant was not a party to the settlement. The parties to the settlement were the customer and Respondent. The Arbitrator noted that discovery failed to reveal any evidence of who paid the settlement. Claimant testified that she has no recollection of whether she contributed toward the settlement amount. She also had no knowledge or input into Respondent's decision to settle and only learned of the settlement afterwards. The Arbitrator determined that expungement is still appropriate.

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, and 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 1301551 from registration records maintained by the CRD for Claimant Lori Reisman Sackler (CRD Number 1425397) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lori Reisman Sackler 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 factually impossible or clearly erroneous.

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

Claimant has one disclosure on her CRD after a 35-year career in the financial services industry. According to Claimant's BrokerCheck® Report, Respondent, her employer at the time, received a complaint on March 30, 2006 that Claimant "recommended the sale of two securities without knowing the cost basis of the stocks." Based upon a handwritten note from the customer to Respondent, dated March 28, 2006, the customer stated that she was concerned about her tax obligations arising from "stocks sold at Merrill Lynch without my knowledge of the consequences of this activity." It bears noting that there are no allegations that Claimant sold the stocks without the customer's knowledge or consent. On the contrary, the evidence shows that both the customer and her ex-husband authorized the sale of the stocks during a May 9, 2005 conference call. The allegation was that the stocks were sold *without the customer's understanding of the consequences, specifically, the tax consequences (capital gains tax), of the sale.*

Respondent settled the dispute with the customer on April 12, 2006 for \$50,000, as evidenced by the disclosure event on Claimant's BrokerCheck® Report and the General Release. Claimant testified that the settlement occurred without her knowledge, input, or consent. Claimant testified that she recalled being told afterwards that Respondent settled because it would be "easier and cheaper" than disputing the claim. According to Claimant's BrokerCheck® Report, Respondent settled the matter "to avoid the cost and uncertainties of litigation."

Discovery failed to reveal who actually paid the \$50,000 settlement amount. Claimant testified that she has no recollection of whether she paid any of it. Claimant's BrokerCheck®

Report states, however, that Claimant paid the entire amount. The General Release establishes that Claimant was not a party to the settlement agreement.

The evidence shows that Claimant, a CPA, considered the need that the customer had for knowing the cost basis of the stocks. At the hearing, Claimant credibly testified that she inquired about the cost basis on several occasions from 2005 to 2006. Her testimony is supported by two documents admitted into evidence. Claimant wrote a memo to the file, dated March 30, 2006, stating that she discussed the cost basis with the customer on April 28, 2005, and then again on September 12, 2005. This memo also states that the customer and her ex-husband decided to create a more balanced portfolio via several transactions, including the sale of the two stocks. This memo further states that Claimant, "as a matter of course," asked clients for the cost basis and "brought the subject up with [the customer] three times that I can recall." The memo also states that Claimant "spoke to [the customer] that we would have to come up with some cost basis for tax purposes."

Claimant wrote another note to the file, signed and dated June 16, 2006, at Respondent's request, in which she states that she discussed the cost basis with the customer on "three occasions." The contents of this note are consistent with the earlier memo and Claimant's hearing testimony. Claimant testified that the customer stated that she did not know the cost basis of the two stocks. Claimant further testified that she was never told that the customer had received the stocks as a gift from her mother or that they had a low-cost basis.

For evidentiary purposes, it is problematic that this customer dispute occurred more than fourteen (14) years ago. Only a limited number of documents were available in discovery due to the passage of time. Respondent also recognized this issue in its Statement of Answer. Reliance is placed on the two notes to the file, which were written around the time of the customer dispute, and the settlement agreement to which Claimant was not a party. Furthermore, Claimant's expungement request was not opposed by either Respondent or the customer. Reliance is also placed on the fact that Claimant has a single disclosure on her CRD after 35 years in the industry. The Arbitrator found the allegation on Claimant's BrokerCheck® Report is misleading. There is ample evidence that Claimant repeatedly considered the cost basis of the stocks, had discussions with the customer and her ex-husband about the cost-basis, and that the customer authorized the sale of the stocks after those discussions. Accordingly, the Arbitrator found the claim was clearly erroneous. Equity and fairness dictate that this customer dispute be expunged from Claimant's CRD record.

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
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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 Merrill Lynch, Pierce, Fenner & Smith Incorporated is assessed the following:

Member Surcharge = \$ 150.00

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: September 8, 2020 1 session
November 24, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: December 15, 2020 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

Annamaria Boccia Smith

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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

Annamaria Boccia Smith

Annamaria Boccia Smith
Sole Public Arbitrator

01/12/2021

Signature Date

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January 12, 2021

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