

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Trevor Tye Roberts

Case Number: 20-01324

vs.

Respondent  
AXA Advisors, LLC

Hearing Site: Richmond, Virginia

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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 Trevor Tye Roberts: Dochter Kennedy, MBA, J.D. and Chelsea Masters, Esq., Advisor Law, LLC., Westminster, Colorado.

For Respondent AXA Advisors, LLC: Kevin W. Brooks, Esq., AXA Equitable Life Insurance Company, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: April 27, 2020.

Trevor Tye Roberts signed the Submission Agreement: April 27, 2020.

Statement of Answer filed by Respondent on or about: June 23, 2020.

AXA Advisors, LLC signed the Submission Agreement: June 22, 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 1860030; 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 that the Arbitrator deny Claimant's request for \$1.00 in compensatory damages; dismiss Respondent from this matter with prejudice; to the extent Respondent is required to participate in the proceedings, award Respondent the cost of this proceeding; assess all costs and fees, including member forum fees, entirely against Claimant; and grant such other and further relief as the Arbitrator may deem just and appropriate.

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 September 4, 2020, Claimant advised that the customers in Occurrence Number 1860030 ("customers") were served with the Statement of Claim. On November 10, 2020, Claimant advised that the customers in Occurrence Number 1860030 were served with the notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on December 17, 2020 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 customers participated in the expungement hearing and did not oppose the expungement request.

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 1860030 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings, exhibits, Claimant's testimony, and Claimant's BrokerCheck® Report.

## 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 1860030 from registration records maintained by the CRD for Claimant Trevor Tye Roberts (CRD Number 4719301) with the understanding that, pursuant to Notice to Members 04-16, Claimant Trevor Tye Roberts 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:

This customer dispute involves annuities. Customers (spouses) became clients of Claimant through a referral from their friend, who was an existing client of Claimant. When customers met with Claimant, they informed Claimant they were currently working with other financial advisors as well, and that customers would compare the performance of the various advisors for the next three years and consolidate under one financial advisor at the end of the three-year period. Customers expressed to Claimant they were interested in purchasing the same variable annuities that their friend owned. After reviewing customers’ current investments and investor profiles, Claimant recommended the annuities as part of their larger, comprehensive financial plan. Between November of 2010 and February of 2011, customers purchased four contracts of the annuities and, with respect to the annuities, chose the same kind of L Share their friend had. Customers completed and signed ample disclosure documents detailing the terms of the annuities. Claimant discussed all the relevant features and risks of the investments with customers. Customers also received copies of the signed documents, as well as a copy of the 348-page prospectus explaining the details of the share type customers had chosen. After purchasing the annuities, one of the customers’ additional financial advisors criticized the value of the annuities and in 2013, customers elected to consolidate their holdings under that additional financial advisor.

In 2015, the market declined and later that year, customers submitted a complaint to Respondent, alleging “misrepresentation in the purchase of annuities in 2010 and 2011.” Customers took issue specifically with the share type chosen. In 2016, after completing a thorough investigation, Respondent denied customers’ claim. In 2017, customers

appealed Respondent’s decision. Respondent reviewed customers’ appeal but denied the claim a second time, noting that the share type chosen provided customers with a shorter surrender charge period in the event customers chose to end the contracts and consolidate under a different financial advisor. In 2018, with legal representation, customers contacted Respondent seeking relief for the same complaint. Respondent conducted another examination into the matter and denied the claim a third time. Customers did not pursue their claim further.

During the time customers were clients of Claimant, the value of customers’ portfolio increased overall by an average of 11.5% per account. Additionally, beginning in 2013, and due specifically to the L Share type chosen, customers could have surrendered the annuities without incurring any penalties, but elected not to do so. As of the date of this hearing, customers maintain the annuities, unaltered since 2013. At the hearing, customer (husband) testified that his frustration and dissatisfaction was directed at Respondent and not Claimant, and that he would like to see Claimant’s record “expunged ASAP.”

Accordingly, expungement is appropriate because customers’ claim is factually impossible or clearly erroneous pursuant to Rule 2080 (b)(1)(A) and false pursuant to Rule 2080 (b)(1)(C). Neither customers nor Respondent presented any evidence that Claimant had misrepresented any facet of the annuities that customers purchased. On the contrary, customer expressed his support for Claimant’s request for expungement. Likewise, Claimant testified credibly and honestly, and cogently explained the basis for his financial advice.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent AXA Advisors, LLC 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:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-hearing Conference: August 18, 2020 1 session		

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: December 17, 2020 1 session		

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Total Hearing Session Fees	= \$	100.00
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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**

William F. Etherington

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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**

***William F. Etherington***

William F. Etherington  
Sole Public Arbitrator

**02/05/2021**

Signature Date

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February 08, 2021

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