

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Aret Gugin

Case Number: 20-01390

vs.

Respondents
Global Arena Capital Corp.
S.W. Bach & Company

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. Members

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Aret Gugin: Jennifer P. Farrar, Esq., Farrar Law PLLC, Tomball, Texas.

Respondent Global Arena Capital Corp. did not enter an appearance.

Respondent S.W. Bach & Company did not enter an appearance.

CASE INFORMATION

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

Aret Gugin signed the Submission Agreement: June 1, 2020.

Respondent Global Arena Capital Corp. did not file a Statement of Answer nor sign the Submission Agreement.

Respondent S.W. Bach & Company did not file a Statement of Answer nor 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 1228533, 1294486, and 1635199; compensatory damages in the amount of \$1.00 from Respondents; and any and all other relief that the Arbitrator deems just and equitable.

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.

Respondents did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and are bound by the determination of the Arbitrator on all issues submitted.

On March 8, 2021, Claimant advised that the customer in Occurrence Number 1635199 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

At the hearing, Claimant advised that the customer in Occurrence Numbers 1228533 and 1294486 is deceased. On April 28, 2021, Claimant filed a Declaration confirming that the customer in Occurrence Numbers 1228533 and 1294486 is deceased. Therefore, the customer was not served the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on April 19, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents did not participate in the expungement hearing.

The customer in Occurrence Number 1635199 also 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 occurrences in the CRD.

On February 24, 2021, Claimant advised that the settlement documentation related to Occurrence Number 1228533 was not available. At the hearing, Claimant testified that while the customer complaint associated with this occurrence is identified as a "settlement," the resolution of the complaint was informal and simply involved reducing the amount of the disputed transaction with a corresponding reduction in the applicable commission. The Arbitrator considered the amount of payment made to any party to the settlement; and based on Claimant's testimony, found that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator noted that Claimant contributed to the settlement amount but determined that expungement is still appropriate because the circumstances surrounding the contribution do not preclude a recommendation to expunge this complaint.

The Arbitrator noted that the disputes related to Occurrence Numbers 1294486 and 1635199 were not settled and, therefore, there were no settlement documents to review.

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, 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 1228533 from registration records maintained by the CRD for Claimant Aret Gugin (CRD Number 2731291) with the understanding that, pursuant to Notice to Members 04-16, Claimant Aret Gugin 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 instant complaint, asserted by the customer on October 27, 2004, alleged Claimant misrepresented a new investment plan, which involved utilizing option strategies. The Arbitrator is satisfied that this allegation is without merit as to Claimant in that it is clearly erroneous and/or false.

This claim arose from the customer's misunderstanding as to the amount that he would need to contribute to his account to fund the transaction, as opposed to any misrepresentation of the underlying investment strategy as the complaint alleged. Although Claimant's CRD indicates that this complaint was settled for \$25,000, of which he contributed \$17,500, the Arbitrator finds those circumstances do not preclude a recommendation to expunge this complaint. To the contrary, the settlement supports the conclusion that the alleged misrepresentation is clearly erroneous and/or false. As Claimant credibly testified, the resolution of this matter involved reducing the amount of the disputed transaction with a corresponding reduction in the applicable commission by \$25,000 in total, of which \$17,500 represented the portion attributable to Claimant. Resolution on such terms provides corroboration for Claimant's assertion that the matter at issue concerned the customer's confusion as to the size of the transaction and not any misrepresentation of the investment plan made by Claimant.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1294486 from registration records maintained by the CRD for Claimant Aret Gugin (CRD Number 2731291) with the understanding that, pursuant to Notice to Members 04-16, Claimant Aret Gugin 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 instant complaint, asserted by the customer on January 27, 2006, alleged an unauthorized transaction made by Claimant. The Arbitrator is satisfied that this allegation is without merit as to Claimant in that it is clearly erroneous and/or false.

This customer complaint arose from the purchase of an equity security, together with a corresponding put option, with the customer alleging that he authorized only the acquisition of the put option. In concluding that the customer's allegation in this regard was clearly erroneous and/or false, the Arbitrator finds Claimant credibly testified that the combined purchase of the security and put option were consistent with the hedged trading strategy that the customer had employed during the preceding year. The Arbitrator also takes note that after the member firm, S.W. Bach & Company, investigated and denied the customer's allegations, the customer apparently abandoned his complaint without ever filing a statement of claim for arbitration, and, as such, is now barred from doing so by FINRA Rule 12206's six year eligibility provision.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1635199 from registration records maintained by the CRD for Claimant Aret Gugin (CRD Number 2731291) with the understanding that, pursuant to Notice to Members 04-16, Claimant Aret Gugin 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 instant complaint, asserted by the customer on October 17, 2012, alleged an unauthorized transaction made by Claimant. The Arbitrator is satisfied that this allegation is without merit as to Claimant in that it is clearly erroneous and/or false.

This complaint arose from Claimant placing stop-loss orders on all securities then held in the customer's account. On the evidence presented, the Arbitrator is persuaded that the customer's assertion that the stop-loss orders were to remain in effect for only twenty-four hours, rather than open-ended, is clearly erroneous and/or false. Claimant's testimony and documentary evidence demonstrate that during the approximate fourteen days during which all of the stop-loss orders were triggered and the related securities sold, the customer regularly accessed and monitored his account online without taking any action or objecting to the resulting trades. Nor did he do so when approximately two weeks later, the customer closed his account at the member firm, Global Arena Capital Corp., and transferred his portfolio, which was then an all cash position, to another member firm. Such failure to act is obviously at odds with the complaint as the customer asserted. Moreover, the Arbitrator notes: (1) after Global Arena Capital Corp. investigated and denied the customer's allegations, the customer apparently abandoned his complaint without ever filing a claim for arbitration, and, as such, is now barred from doing so by FINRA Rule 12206's six year eligibility provision; and (2) although the customer was served with a copy of Claimant's Statement of Claim and given notice of the April 19, 2021 hearing in this matter, he did not appear at the hearing nor did he otherwise seek to be heard or present evidence opposing the request for expungement.

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 person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Global Arena Capital Corp. and S.W. Bach & Company are each assessed the following:

Member Surcharge	= \$	150.00
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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:

Four (4) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$	200.00
Pre-Hearing Conferences: September 18, 2020	1 session	
September 29, 2020	1 session	
February 18, 2021	1 session	
February 25, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 19, 2021	1 session	
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Total Hearing Session Fees	= \$	250.00

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

David John Reilly

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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

David John Reilly

David John Reilly
Sole Public Arbitrator

04/30/2021

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.

April 30, 2021

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