

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

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In the Matter of the Arbitration Between:

Claimant  
James Robert Holt, Jr.

Case Number: 20-01448

vs.

Respondent  
MSI Financial Services, Inc.

Hearing Site: Indianapolis, Indiana

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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 James Robert Holt, Jr. (“Claimant”): Michael O’Gara, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent MSI Financial Services, Inc. (“Respondent”): Martin Harris, Esq., Harris & Affiliates, Ltd., Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: May 7, 2020.  
Amended Statement of Claim filed on or about: June 22, 2020.  
Claimant signed the Submission Agreement: May 6, 2020.

Statement of Answer filed on or about: July 17, 2020.  
Respondent signed the Submission Agreement: August 6, 2020.

**CASE SUMMARY**

In the Statement of Claim and 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 but asserted an affirmative defense as to Claimant’s request for damages.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1203280, 1203282, 1216248, 1387739, and 1695232; an award of damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable. In the Amended Statement of Claim, Claimant restated the same request for relief in the Statement of Claim but withdrew the request for expungement of Occurrence Number 1203282.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in damages and requested that 100% of any forum fees and/or session fees be assessed to 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 November 25, 2020, Claimant filed a copy of the death record and obituary for the customer in Occurrence Number 1387739. Claimant also advised that the customers in Occurrence Numbers 1203280, 1216248, and 1695232 ("Customers") were served with the Amended Statement of Claim and notice of the date and time of the expungement hearing (each a "Notice" and, collectively, "Notices") sent via FedEx and USPS certified mail. On December 1, 2020, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed copies of the FedEx tracking information available online for the Notices. On December 14, 2020, Claimant filed a copy of the updated FedEx tracking information available online for the Notice sent to the customer in Occurrence Number 1695232. On December 15, 2020, Claimant filed copies of the USPS tracking information available online for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on January 7, 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, took no position on the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 noted that the disputes related to Occurrence Numbers 1203280, 1216248, 1387739, and 1695232 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: Claimant's Exhibits 1-16, Claimant's Affidavit confirming service of the Notices, FedEx and USPS tracking information for the Notices, death record for the customer in Occurrence Number 1387739, 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 Numbers 1203280, 1216248, 1387739, and 1695232 from registration records maintained by the CRD for Claimant James Robert Holt, Jr. (CRD Number 1038929) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Robert Holt, Jr. 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:

Claimant testified that in each occurrence, he met the customer and provided an overview of the advantages and disadvantages of each type of insurance policy, particularly as to what would help each customer achieve their objectives. Claimant reviewed each prospectus and discussed illustrations for each type of insurance. Based upon each customers’ experience, investor profile, and investment objectives, Claimant recommended a particular policy. Claimant considered investment summaries, tax deductible opportunities, and retirement cash flows. Claimant asked each customer about their estate plan, individual retirement plan, goals, hopes, dreams, and charitable opportunities. After the customers affirmed their understanding of the variable life insurance policy (“VUL”), they received copies of all signed documents. Throughout this period, some customers also relied upon the professional advice of their attorneys and accountants. Every customer was provided with a free look period, but no customer complained during that period. Claimant spoke to the customers after they received their first annual statements and went over every section with them, to make sure they understood every part of the statements. Subsequently, Claimant and/or his office contacted the customers at least twice a year.

### **Occurrence Number 1203280**

The evidence demonstrated that the customers purchased a VUL in 1998 and 1999, after several meetings. The customers’ version of the events is clearly erroneous. The testimony of Claimant, coupled with the exhibits, showed there was no misrepresentation in the sale of the VUL. Claimant reviewed the prospectus, discussed the illustrations, and reviewed every document before the customers signed disclosures and completed the

documentation necessary for the purchase. For 10 years, between 1993 and 2003, Claimant and/or his staff met with the customers bi-annually to discuss the performance of their portfolio and they expressed happiness.

In spring 2003, the customers purchased a NY Life policy from a different financial advisor, Mr. S. In July, without speaking to Claimant, the customers filed a formal complaint against him. After an investigation, Respondent denied the Claim, finding it had no merit.

The Arbitrator finds Claimant's version of the events is supported by the evidence, and therefore, recommends expungement. A review of the evidence showed the customers understood their purchase of the VULs. Their allegation is clearly erroneous and false. The dispute did not arise out of any misrepresentation by Claimant. It was based upon advice from Mr. S. The Arbitrator notes that the customers ultimately sued Mr. S. in a class action lawsuit and it was determined that Mr. S had operated a Ponzi scheme.

**Occurrence Number 1216248**

The evidence demonstrated that the customer purchased a VUL in August 2002 from Claimant. The transaction was a Section 1035 exchange. The evidence also demonstrated that at no time did Claimant ever represent that the 1035 exchange would result in no future premium payments. In fact, when Claimant explained the details of the policy, he showed the customer that there would be an on-going premium and it was not a "paid up policy."

Between 2003 and 2004, Mr. S. encouraged the customer to file a complaint against Claimant and use any proceeds to purchase investments through Mr. S. The Customer made a complaint. On August 25, 2004, Respondent denied the complaint, after an investigation.

The Arbitrator finds that the customer's allegation against Claimant is false and clearly erroneous because nothing in the record supports the customer's claim. The customer's decision to complain was based on Mr. S's advice. Therefore, expungement is recommended.

**Occurrence Number 1387739**

A preponderance of the evidence demonstrates that in July 2007, the customer and her husband purchased a VUL from Claimant because of its flexibility to increase in the future. They reviewed, completed, and signed every document, affirming their understanding of the VUL, and received copies of the signed documents. This VUL was funded by whole life insurance policies.

Claimant regularly spoke to the customer regarding the performance of the portfolio. In January 2008, the customer told Claimant about a Bankers Life agent who wanted to help her get her money back so she could invest it with him. Claimant testified that the customer told him she had received a semi-annual premium notice from New England which was much more than the expected premium. Claimant told the customer the

premium notice was incorrect. Although Claimant reached out to Bankers Life to get the document corrected, the Bankers Life agent had already arranged for the correction.

The customer made a complaint about what happened when the VUL was allegedly funded with annuity funds. On March 21, 2008, after completing an investigation, Respondent denied the customer's complaint, finding it had no merit and correcting the customer about the VUL's funding.

The Arbitrator finds the customer's version of the events to be false and factually impossible. The evidence demonstrates that the VUL was funded with whole life policies, not annuity funds. The Arbitrator also finds that the allegation of misrepresentation is clearly erroneous. The dispute apparently arose out of the customer's decision to take advice from the Bankers Life agent. For these reasons, expungement is recommended.

**Occurrence Number 1695232**

The evidence demonstrated that the customer and her husband sought life insurance with a cash value. Prior to purchasing any policy, the customer and her husband were told a VUL was not a guaranteed investment. The customer and her husband requested individual policies within a specific monthly premium range. In October 1997, they chose separate VUL policies, with premiums and death benefit flexibility. They signed all documents and received their own copies of the paperwork. Between October 1997 and February 2014, Claimant regularly spoke to the customer and her husband regarding the performance of their portfolio. The customer and her husband each received separate monthly premium confirmation statements, which included detailed monthly premiums, cash values, and asset allocation information, in addition to semi-annual prospectus updates and detailed annual policy statements.

Claimant's testimony, coupled with the evidence, clearly demonstrated that Claimant met the customer and her husband on several occasions between 2001 and 2014, as they were experiencing financial challenges and considering surrendering both policies. Claimant reminded them that they could exercise their flexibility to withdraw money from the policies, instead of surrendering the policies, and they could also temporarily decrease their monthly premium payments. The customers kept their VULs. They understood that the death benefit would be reduced by cash value withdrawals.

In 2004, 2007, 2010, and 2013, Claimant recommended that the customer and her husband increase their monthly payments, but they declined to do so. In each instance, the customer and her husband understood they would not be generating any cash value growth until they did so. However, the customer and her husband were comfortable with their monthly premium rate. Claimant told them that, depending on market performance and the future cost of insurance, they may have to increase their premiums, decrease their coverage, or do both to maintain the two VULs.

In February 2014, Claimant contacted the customer and her husband, but received no response. Claimant learned the customer had contacted the Better Business Bureau regarding her husband's policy. On February 19, 2014, after completing an investigation, Respondent denied the customer's complaint, finding it had no merit and the VUL had not been misrepresented to the customers.

The Arbitrator finds, based on the testimony and evidence presented, that Claimant clearly explained the VUL and the customer and her husband signed all the documents related to its purchase. The claim, allegation, or information is factually impossible, clearly erroneous, or false. Therefore, expungement is recommended.

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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee = \$ 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 @ \$50.00/session = \$ 50.00

Pre-Hearing Conference: September 14, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00

Hearing Date: January 7, 2021 1 session

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Total Hearing Session Fees = \$ 100.00

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**

Lynn Hirschfeld Brahin

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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**

***Lynn Hirschfeld Brahin***

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Lynn Hirschfeld Brahin  
Sole Public Arbitrator

**01/19/2021**

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Signature Date

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January 19, 2021

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