

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

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In the Matter of the Arbitration Between:

Claimant  
Brian John Addington

Case Number: 20-01465

vs.

Respondents  
Banc of America Investment Services Inc.  
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: San Francisco, California

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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. Members

This case was administered under the Special Proceeding option for simplified cases.

**REPRESENTATION OF PARTIES**

For Claimant Brian John Addington (“Claimant”): Brian Luther, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondents Banc of America Investment Services Inc. (“BOA”), and Merrill Lynch, Pierce, Fenner & Smith Inc. (“MLP”): Patrick J. Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

Hereinafter, BOA and MLP are collectively referred as “Respondents.”

**CASE INFORMATION**

Statement of Claim filed on or about: May 8, 2020.  
Claimant signed the Submission Agreement: May 8, 2020.

Statement of Answer filed by Respondents on or about: July 28, 2020.  
MLP signed the Submission Agreement: July 28, 2020.  
BOA signed the Submission Agreement: July 31, 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, Respondents took no position on Claimant's expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1475790 from Claimant's CRD records, pursuant to a finding that the claims, allegations, and information are factually impossible and clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A) and that the claims, allegations, and information are false, pursuant to FINRA Rule 2080(b)(1)(C); and
2. Compensatory damages in the amount of \$1.00 from Respondents.

In the Statement of Answer, Respondents opposed Claimant's request for compensatory damages in the amount of \$1.00.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On December 11, 2020, Claimant provided the United States Postal Service certified mail tacking numbers for his letter sent to the customer in Occurrence Number 1475790 ("Customer"), which included notice of the expungement hearing and copies of the Initial Pre-Hearing Conference ("IPHC") Order, the IPHC Scheduling Letter, and the Statement of Claim.

The Arbitrator conducted a recorded, telephonic hearing on January 12, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and, as stated in the Statement of Answer, 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 noted that the dispute related to Occurrence Number 1475790 was 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; Claimant's BrokerCheck® Report; and Claimant's testimony.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrator recommends the expungement of all references to Occurrence Number 1475790 from registration records maintained by the CRD for Claimant Brian John Addington (CRD Number 2882035) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian John Addington 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.

The claim, allegation, or information is false.

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

The claims of misrepresentation and unsuitability are false because, in the testimony given during the telephonic hearing and the Exhibits provided, there was no indication of misrepresentation or unsuitability on the part of Claimant as the broker for the Customer. The Customer signed an account application stating that she had 25 years of investment experience in stocks, bonds, and mutual funds dating back to 1981. In her client profile, she indicated that she had a moderate risk tolerance. In the same document, she also indicated that she had significant annual income and a high net worth. Claimant recommended investing in a fund and provided the Customer with a prospectus of that fund in September of 2008. The claims allegations and information are false and clearly erroneous pursuant to FINRA Rule 2080. Therefore, expungement is hereby recommended.

### **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 parties, MLP and BOA are each 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: September 30, 2020                             | 1 session |       |

|  |           |       |
|--|-----------|-------|
| One (1) hearing session on expungement request @ \$50.00/session | = \$      | 50.00 |
| Hearing Date: January 12, 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**

John J. Flynn

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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**

***John J. Flynn***

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John J. Flynn  
Sole Public Arbitrator

**01/27/2021**

\_\_\_\_\_  
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.

January 28, 2021

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