

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kevin Patrick Janus

Case Number: 20-01466

vs.

Respondent
Pruco Securities, LLC.

Hearing Site: Philadelphia, Pennsylvania

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 Kevin Patrick Janus: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent Pruco Securities, LLC.: Jennifer E. Novoselsky, Esq., Reyes Kurson, Ltd., Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: May 8, 2020.

Kevin Patrick Janus signed the Submission Agreement: May 8, 2020.

Statement of Answer filed by Respondent on or about: June 29, 2020.

Pruco Securities, LLC. signed the Submission Agreement: June 29, 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 and denied any allegations of wrongdoing made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1632800

and 1617573; and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that Claimant's request for \$1.00 in compensatory damages be denied, that any arbitration forum fees be assessed to Claimant, and that any potential request for attorneys' fees and costs be denied.

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.

On October 8, 2020, Claimant advised that the customer in Occurrence Numbers 1632800 and 1617573 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted recorded, telephonic hearings on October 28, 2020 and December 29, 2020 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearings and did not oppose the request for expungement.

The customer did not participate in the expungement hearings and did not oppose the expungement request. The Arbitrator found that the customer had notice of the expungement request and hearings.

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 disputes related to Occurrence Numbers 1632800 and 1617573 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 BrokerCheck® Report and testimony, Claimant's Memorandum of Law Exhibits including the Prudential Premier Variable Annuity Series Application Form, the Contract Delivery Receipt, and the Welcome Package and Contract.

The Arbitrator noted that the customer in the underlying dispute related to Occurrence Number 1617573 is the same customer related to Occurrence Number 1632800. By Order dated October 29, 2020, the Arbitrator requested additional information regarding Claimant's request for expungement of Occurrence Number 1617573. On November 2, 2020, Claimant submitted additional documents regarding his request for expungement of Occurrence Number 1617573.

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 1632800 from registration records maintained by the CRD for Claimant Kevin Patrick Janus (CRD Number 5685303) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kevin Patrick Janus 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 false.

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

The customer alleged that Claimant did not fully disclose all the facts regarding tax consequences. The alleged damages were \$0.00; there was no damage amount alleged. There was no settlement as Respondent Pruco Securities, L.L.C. denied the claim. Additionally, no arbitration was filed.

Based upon the pleadings, Claimant’s credible testimony, and the documentary evidence submitted, the Arbitrator found that the claim, allegation or information is false. Claimant testified that he recommended that the customer invest some of her assets in a Prudential Variable Annuity. At one point, the customer decided to fund the annuity by liquidating shares of stock that she had purchased prior to her association with Claimant. Claimant told her that there may be tax consequences to selling shares of stock and advised that she consult with a tax professional because he could not give her tax advice. The customer indicated to Claimant that she would speak to her tax advisor. The customer contacted the PRUCO trade desk and requested the liquidation of certain shares of stock. Claimant was not involved in determining which stocks to liquidate. Claimant testified that it was his understanding that the customer consulted with a CPA. Claimant testified that the customer’s CPA contacted him to confirm the customer’s holdings as set forth in her statement, so that he could research the tax liability issue. The CPA stated that he would review the situation with the customer. Claimant testified that he told the customer that he could not provide tax advice, and that she should speak to a tax professional on several occasions. The customer signed the Prudential Premier Variable Annuity Series Application Form. This form contained a disclosure that “Neither Pruco Life nor any person authorized by Pruco Life will be responsible for, and agree to indemnify and hold Pruco Life harmless from and against, any claim, loss, taxes, penalties, or any other liability or damages in connection with, or arising out of, any act or omission if we acted on an authorized individual’s instructions in good faith and in reliance on this Authorization.” The customer also received a Welcome Package and Contract which stated that “Prudential, its affiliates, its distributors and their respective representatives do not provide tax, accounting or legal advice...Please consult your own independent advisor as to any tax, accounting or legal statements made herein.”

The Arbitrator found that the customer was aware that Claimant could not provide tax advice regarding the liquidation of shares of stock and she sought tax advice from her CPA. The Arbitrator concluded that Claimant was not involved in the selection of stocks that the customer liquidated which triggered tax consequences. Therefore, the Arbitrator found that the customer's allegations are false and should be expunged.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1617573 from registration records maintained by the CRD for Claimant Kevin Patrick Janus (CRD Number 5685303) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kevin Patrick Janus 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 false.

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

The Arbitrator found that although Occurrence Number 1617573 does not appear on Claimant's BrokerCheck® Report, it appears on his Form U4. The Arbitrator noted that the Form U4 indicates "DRP filed in error: Service Issue." The Arbitrator also noted that the customer involved in Occurrence Number 1617573, is the same as in Occurrence Number 1632800. Additionally, the product type, employing firm, and alleged compensatory damage amount is the same for both occurrence numbers. Based upon the pleadings, Claimant's Form U4 and Claimant's Memorandum of Law – Exhibit E, the Arbitrator found that Occurrence 1617573 involves the same conduct alleged by the customer against Claimant, as Occurrence Number 1632800. The Form U4 does not specify the nature of the allegation for Occurrence Number 1617573. However, a review of the customer's complaint dated June 20, 2012 (Claimant's Memorandum of Law – Exhibit E), indicates that the conduct she was complaining of, was the same tax issue as complained of in Occurrence Number 1632800. Additionally, the date of the June 20, 2012 Complaint coincides with the June 22, 2012 date listed on the Form U4, that the complaint was received by/served on the firm. Since Occurrence Number 1617573 is based upon the same conduct as Occurrence Number 1632800, it should be expunged for the same reasons set forth for Occurrence Number 1632800.

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 Pruco Securities, 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: September 2, 2020 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$ 100.00
Hearing Date: October 28, 2020 1 session
December 29, 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

Carol H. Gold

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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

Carol H. Gold

Carol H. Gold
Sole Public Arbitrator

01/28/2021

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 29, 2021

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