

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Tuan Phan

Case Number: 20-01573

vs.

Respondent
National Securities Corporation

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. Member

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

REPRESENTATION OF PARTIES

For Claimant Tuan Phan: Tosh Grebenik, J.D., Judex Law, LLC, Broomfield, Colorado.

For Respondent National Securities Corporation: Fred N. Knopf, Esq., National Securities Corporation, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 18, 2020.

Tuan Phan signed the Submission Agreement: April 29, 2020.

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

National Securities Corporation signed the Submission Agreement: July 23, 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 Numbers 1580620, 1656340, 1684670, and 1814135; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested that Claimant pay all forum fees and costs, including any member surcharges, incurred in this proceeding.

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 February 1, 2021, Claimant advised that the customers in Occurrence Numbers 1580620, 1656340, 1684670, and 1814135 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on February 2, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The customers in Occurrence Numbers 1580620, 1656340, and 1814135 did not participate in the expungement hearing. The customer in Occurrence Number 1684670 did not participate in the expungement hearing and did not oppose the request for expungement. 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 also reviewed the settlement documentation related to Occurrence Number 1814135, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator further noted that Claimant contributed to the settlement amount. However, expungement is still appropriate as the contribution was required by his employer's company policy.

The Arbitrator noted that the disputes related to Occurrence Numbers 1580620, 1656340, and 1684670 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, written statement from the customer in Occurrence Number 1684670, 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 1580620 from registration records maintained by the CRD for Claimant Tuan Phan (CRD Number 4179988) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tuan Phan 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 issues raised by the customers pertained to poor advice and poor recommendation by Claimant. The customers' account was a non-discretionary account and they were fully aware via daily communication with Claimant of the investments in the account, and their performance. Further, this stock aligned with the customers' investment profile to focus on income generating assets. Lastly, Claimant exercised the appropriate due diligence and research prior to presenting the investment to the customers. The customers' account was closed and commissions were reversed. There was not a settlement in this matter. For these reasons, expungement of Claimant's record is appropriate per FINRA Rule 2080(b)(1)(C).

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1656340 from registration records maintained by the CRD for Claimant Tuan Phan (CRD Number 4179988) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tuan Phan 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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The issues raised by the customer pertained to excessive trading in his account. The customer's account was a non-discretionary account and he was fully aware via daily communication with Claimant of the investments in his account, and their performance. Further, this stock aligned with the customer's investment profile to trade in the United States market. Lastly, activity letters were issued to the customer which were signed and returned by the customer to Claimant's employer. Claimant exercised the appropriate due diligence and research prior to presenting the investment to the customer. The matter was closed as a no-action. For these reasons, expungement of Claimant's record is appropriate for per FINRA Rule 2080(b)(1)(A).

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1684670 from registration records maintained by the CRD for Claimant Tuan Phan (CRD Number 4179988) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tuan Phan 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 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 issues raised by the customer pertained to a decline in the J.C. Penny Company, Inc. ("JCP") stock. In his complaint, the customer alleged unauthorized trading, unsuitability, and poor advice. The customer's account was a non-discretionary account and he was fully aware via daily communication with Claimant of the investments in his account, and their performance. Claimant could not have invested in JCP without the customer's approval and at no time prior to his complaint did the customer request that Claimant sell this stock. Further, this stock aligned with the customer's risk tolerance. Claimant exercised the appropriate due diligence and research prior to presenting the investment to the customer. The customer remains a client of Claimant's employer. The matter was closed with no action. For these reasons, expungement of Claimant's record is appropriate per FINRA Rule 2080(b)(1)(C).

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1814135 from registration records maintained by the CRD for Claimant Tuan Phan (CRD Number 4179988) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tuan Phan 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 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 issues raised by the customer pertained to a decline in the value of an IRA in his account. In his claim, the customer alleged breach of fiduciary duty, misrepresentation, and negligence. The customer's account was a non-discretionary account and he was fully aware until March 2014 via daily communication with Claimant of the investments in his account, and their performance. The lack of communication between the customer and Claimant between March 2014 and when the customer closed his account was in part because the customer was dealing with charges by the IRS for willfully failing to disclose a bank account to the Department of the Treasury. While the customer may have needed and expected a certain amount of funds in the IRA to pay the IRS as he had pled guilty to those charges and was facing a prison term, there is no evidence that Claimant was guilty of the allegations that the customer alleged. Claimant exercised the appropriate due diligence and research prior to presenting the investment to the customer. Though Claimant contributed to the settlement with the customer, his contribution was required per his employer's company policy. In addition, the settlement amount that he contributed was de minimis given the amount of the claim. For these reasons, expungement of Claimant's record is appropriate per FINRA Rule 2080(b)(1)(C).

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 firm that employed the associated person at the time of the events giving rise to the disputes. Accordingly, as a party, Respondent National Securities Corporation is 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:

One (1) pre-hearing session @ \$50.00/session	= \$	50.00
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Pre-Hearing Conference: September 8, 2020	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: February 2, 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

Josian Antoine

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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

Josian Antoine

Josian Antoine
Sole Public Arbitrator

02/15/2021

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.

February 16, 2021

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