

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard Evan Baer

Case Number: 20-01591

vs.

Respondent
Lefcourt Financial Group, Inc.

Hearing Site: San Francisco, California

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 Richard Evan Baer (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

Respondent Lefcourt Financial Group, Inc. (“Respondent”) did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: May 19, 2020.

Amended Statement of Claim filed on or about: March 3, 2021.

Second Amended Statement of Claim filed on or about: March 8, 2021.

Claimant signed the Submission Agreement: May 19, 2020.

Respondent did not file a Statement of Answer or 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:

1. Expungement of Occurrence Number 54797 pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegations, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Number 54797 pursuant to FINRA Rule 2080(b)(1)(B), as

- Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of Occurrence Number 54797 pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegations, or information is false;
 4. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 54797 in their entirety;
 5. Compensatory damages in the amount of \$1.00 from Respondent; and
 6. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant withdrew the claim for compensatory damages in the amount of \$1.00 from Respondent.

In the Second Amended Statement of Claim, Claimant re-asserted a claim for compensatory damages in the amount of \$1.00 from Respondent.

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.

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

Respondent did not file a Statement of Answer. The Claim Notification letter dated July 21, 2020 was sent to Respondent's addresses shown from the CRD and the California Secretary of State records by regular mail and FedEx. All regular mail and FedEx deliveries were returned to FINRA Office of Dispute Resolution. Respondent is a terminated member of FINRA.

The Claim Notification letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent failed to register for the DR Portal.

Although the Claim Notification letter was returned, the Arbitrator found that all reasonable efforts were made to serve Respondent. The Arbitrator determined that Respondent is, therefore, bound by the Arbitrator's ruling and determination.

On December 1, 2020, Claimant submitted an Affidavit that the customer in Occurrence Number 54797 ("Customer") is deceased. The Arbitrator found the Customer was deceased and could not be served.

On March 3, 2021, Claimant filed a motion to amend the Statement of Claim, to which no response was filed. The Arbitrator granted the motion.

On March 8, 2021, Claimant filed a motion to amend the Amended Statement of Claim, to which no response was filed. The Arbitrator granted the motion.

The Arbitrator conducted a recorded, telephonic hearing on March 10, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customer did not participate in the expungement 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 was unable to review the settlement documentation related to Occurrence Number 54797 due to the length of time since the settlement occurred and that Respondent is non-responsive. The Arbitrator reviewed the settlement amount, Claimant's contribution amount, and the broker statement from Claimant's BrokerCheck® Report. The Arbitrator noted that the date of the settlement preceded the effective date of the rule against conditioned settlements. Based on Claimant's testimony, the Arbitrator also noted that Claimant contributed to the settlement to avoid the cost of litigation.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's pleadings; Claimant's testimony; and Claimant's exhibits.

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 54797 from registration records maintained by the CRD for Claimant Richard Evan Baer (CRD Number 848798) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Evan Baer 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

In 1990, the Customer was the client of a stockbroker ("Mr. G") who was a colleague of Claimant. The Customer was a retired widow in her 70's. On June 19, 1992, the

Customer made a formal complaint, reported on Claimant's CRD records and BrokerCheck® Report, that Claimant and Mr. G did not disclose the tax consequences of surrendering a deferred annuity policy. On April 20, 1993, the Customer's claim evolved into a NASD arbitration. The Customer sought compensatory damages in the amount of \$81,336.21. Rather than holding an expensive out of state arbitration, the Respondent settled with the Customer in the amount \$55,000.00. Claimant paid \$27,500.00 of this amount.

The allegation that Claimant was involved in not disclosing the tax consequences of surrendering a deferred annuity policy is false, meeting FINRA Rule 2080(b)(1)(B). Apart from answering a colleague's question in the presence of the Customer with respect to the value and return of an annuity, Claimant did not advise the Customer about surrendering an annuity. Claimant was not asked or did he discuss with the Customer the tax implications of surrendering an annuity. Claimant was not the Customer's financial or tax advisor. Any allegation of misrepresentation with respect to the surrender of the annuity must be directed at the Customer's financial advisor, Mr. G, who provided Claimant with erroneous tax basis information for the annuity and who recommended the surrender of the annuity and the purchase of a collateralized mortgage obligation.

Claimant was not involved in the alleged investment-related sales practice violation and therefore, his request for expungement is granted.

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	= \$	1,575.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

February 2, 2021, postponement requested by Claimant.	= \$	Waived
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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 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: March 10, 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

Laurel Littman Gothelf

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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

Laurel Littman Gothelf

Laurel Littman Gothelf
Sole Public Arbitrator

04/06/2021

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 07, 2021

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