

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard Evan Baer

Case Number: 20-01592

vs.

Respondent
John Hancock Distributors LLC

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.

For Respondent John Hancock Distributors LLC (“Respondent”): William A. Gottlieb, Esq., John Hancock Life Insurance Company, Boston, Massachusetts.

CASE INFORMATION

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

Claimant signed the Submission Agreement: May 19, 2020.

Respondent did not file a Statement of Answer.

Respondent signed the Submission Agreement: June 24, 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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claim (“Underlying Claim”), Occurrence Number 125116, from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;

2. Expungement of the Underlying Claim from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying the Underlying Claim in their entirety;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

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 with FINRA Office of Dispute Resolution a Statement of Answer but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”).

The Arbitrator determined that Respondent was served with the Claim Notification letter dated May 29, 2020 by regular mail; and an Overdue Notice dated July 21, 2020 (including a copy of the Statement of Claim) and the Notification of Arbitrator dated August 13, 2020, both by regular mail and FedEx.

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 him from submitting pleadings, selecting arbitrators, and receiving notifications relating to case information and deadlines. Although Respondent failed to register for the DR Portal, the Arbitrator determined that Respondent was properly served and is therefore bound by the Arbitrator's ruling and determination.

On November 9, 2020, Claimant advised that the customers in Occurrence Number 125116 (“Customers”) were served with the Statement of Claim and notice of expungement hearing. On November 17, 2020, Claimant filed an Affidavit signed by Claimant’s counsel advising that the Customers were served with the Statement of Claim.

The Arbitrator conducted a recorded, telephonic hearing on December 21, 2020 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

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 occurrence in the CRD.

The Arbitrator did not review the settlement documents for the Underlying Claim and was unable to make any assertion or findings on the terms of the settlement. The Arbitrator noted that Claimant testified that he attempted to secure the settlement document but was unable to do so. The Arbitrator is satisfied with Claimant’s good faith efforts to obtain the settlement documents.

The Arbitrator noted that Claimant testified that the settlement was not conditioned on the Customers not opposing the request for expungement. Based on Claimant's BrokerCheck® Report, the Arbitrator noted that Claimant settled for substantially less than the alleged compensatory damages and that Claimant contributed the entire settlement amount. The Arbitrator found that expungement is still warranted because Claimant settled as a business decision to avoid the cost of litigation.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Claimant's testimony; and Claimant's Exhibits.

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:

1. The Arbitrator recommends the expungement of all references to Occurrence Number 125116 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 claim, allegation, or information is false.

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

The Customers were provided with a risk assessment of the two real estate investments of which they complained. They were informed and aware that the investments contained higher risk of losses than a traditional stock or bond investment. The real estate investments were smaller investments than their other investments. The investment loss was caused by a decline in the real estate market, not by any action of Claimant herein. The other losses complained of, that the losses incurred because the assets were not transferred timely, was not within Claimant's control. He did not handle the transfer. Thus, the claim is false.

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 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 = \$ 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 16, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: December 21, 2020 1 session

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

Kevin C. Coleman

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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

Kevin C. Coleman

Kevin C. Coleman
Sole Public Arbitrator

01/28/2021

Signature Date

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January 29, 2021

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