

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

David C. Eidell and Derek D. Christian

Case Number: 20-01622

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Chicago, Illinois

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 Persons vs. Member

REPRESENTATION OF PARTIES

For Claimants David C. Eidell (“Eidell”), and Derek D. Christian (“Christian”) (collectively “Claimants”): Harris Freedman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Respondent”): W. Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 21, 2020.

Claimants signed the Submission Agreement: May 21, 2020.

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

Respondent signed the Submission Agreement: June 29, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants 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 Claimants’ expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested expungement of Occurrence Numbers 1675187 and 1675399, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent opposed Claimants' request for damages.

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 14, 2020, Claimants advised that the customers in Occurrence Numbers 1675187 and 1675399 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On December 22, 2020, Claimants filed an Affidavit confirming that the Customers were served with the Notice. Claimants also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on February 1, 2020¹, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

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 Claimants' BrokerCheck® Reports. 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 documents for Occurrence Numbers 1675187 and 1675399, considered the amount of payments made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlement not opposing the expungement request and that Claimants did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim and Claimants' 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 Numbers 1675187 and 1675399 from registration records maintained by the CRD for Claimants David C. Eidell (CRD Number 3053388) and Derek D. Christian (CRD Number 1874637) with the understanding that, pursuant to Notice to Members 04-16, Claimant David C. Eidell and Derek D. Christian 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.

Occurrence Number 1675187

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 factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Eidell’s recommendation was suitable in light of the Customers’ financial strength. The Customers insisted on increasing their investment despite cautionary statements by Eidell. Furthermore, there was no forgery.

Occurrence Number 1675399

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:

Christian was not involved in recommending securities to the Customers. He merely attended to the mechanical job of placing orders.

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
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee = \$ 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 @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: September 10, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: February 1, 2021 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the total hearing session fees jointly and severally to Claimants.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Philip J. Glick

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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

Philip J. Glick

Philip J. Glick
Sole Public Arbitrator

02/03/2021

Signature Date

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February 03, 2021

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