

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Marc Aubrey Alexander

Case Number: 20-01630

vs.

Respondent

RBC Capital Markets, LLC

Hearing Site: Atlanta, Georgia

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Marc Aubrey Alexander (“Claimant”): J. Michael Bishop, Esq., Smiley Bishop & Porter LLP, Atlanta, Georgia.

For Respondent RBC Capital Markets, LLC (“Respondent”): James K. Langdon, Esq. and Tiana M. Towns, Esq., Dorsey & Whitney LLP, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on or about: May 22, 2020.

Claimant signed the Submission Agreement: May 21, 2020.

Statement of Answer filed on or about: August 11, 2020.

Respondent signed the Submission Agreement: August 14, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1556273, compensatory damages in the amount of \$100.00, and such other relief as the Arbitrator deems just and proper.

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

At the hearing, Claimant withdrew the request for \$100.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On January 18, 2021, Claimant filed Articles of Dissolution for the customer in Occurrence Number 1556273 ("Customer"). Claimant advised that the Customer's registered agent was served with the Statement of Claim and notice of the date and time of the expungement hearing via email on January 11, 2021.

The Arbitrator conducted a recorded hearing by videoconference on February 2, 2021, 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, did not oppose the request for expungement.

No representative for the Customer participated in the expungement hearing. The Arbitrator found that the Customer's registered agent 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 also reviewed the settlement documentation, 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 and that Claimant contributed to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Exhibits 9 and 10 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 1556273 from registration records maintained by the CRD for Claimant Marc Aubrey Alexander (CRD Number 2432414) with the understanding that, pursuant to Notice to Members 04-16, Claimant Marc Aubrey Alexander 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 findings 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:

In this case, the testimony and documentary evidence established that the Customer agreed to amend its investment policy statement to allow the purchase of Build America Bonds and bonds with longer dated maturities. As the Customer’s complaint is not supported by the evidence, it is clearly erroneous and false. The Customer was a sophisticated institutional investor that wanted to generate higher yields than were being earned on money market accounts. Claimant testified that the Customer’s representative agreed that the investment policy needed to be amended. In an email dated September 16, 2010 (the day that Customer’s representative and Claimant met), Claimant stated, “I am in the process of working on the amendment for the investment policy statement as well.” Claimant testified that the amendment would allow the purchase of Build America Bonds, and would allow the purchase of bonds with longer dated maturities. On September 28, 2010, Claimant sent the Customer’s representative an email stating, “I have 2 documents attached here for you, one is simply an amendment that you could use...” The Customer’s representative responded, “I’ll look at it in a day or two. Let’s don’t [sic] let that slow the buying down though [sic].” Further, the Customer’s representative approved all purchases in advance, and all purchases were consistent with the amended investment policy as agreed to by Customer. Each purchase was documented by a confirmation. All purchases and holdings were set forth in the monthly statements and the Customer’s representative logged into its account online at least 30 times from September 2010 - February 2011.

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 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 14, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: February 2, 2021 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

Scott A. Schweber

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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

Scott A. Schweber

Scott A. Schweber
Sole Public Arbitrator

02/05/2021

Signature Date

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February 05, 2021

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