

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Joseph Andrew Davis

Case Number: 20-01729

vs.

Respondent  
AXA Advisors, LLC

Hearing Site: Salt Lake City, Utah

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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 Joseph Andrew Davis (“Claimant”): Docthor Kennedy, J.D., MBA, and Michael O’Gara, Esq., Advisor Law, LLC, Westminster, Colorado.

For Respondent AXA Advisors, LLC (“Respondent”): Annette K. Ebright, Esq., Equitable Financial Life Insurance Company, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: June 2, 2020.

Claimant signed the Submission Agreement: June 2, 2020.

Statement of Answer filed by Respondent on or about: June 8, 2020.

Respondent signed the Submission Agreement: June 8, 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:

1. Expungement of the underlying complaint (“Underlying Complaint”), Occurrence Number 1782232, 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 Complaint 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 Complaint;
  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.

In the Statement of Answer, Respondent requested:

1. Claimant takes nothing against Respondent;
2. Denial of Claimant's request for \$1.00 in compensatory damages;
3. The costs of this proceeding; and
4. Assessment of all costs of this proceeding, including member forum fees, against Claimant

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 November 9, 2020, Claimant advised that the customer in the Underlying Complaint ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing, sent by FedEx. On November 17, 2020, Claimant filed an Affidavit signed by Claimant's counsel advising that the Customer was served with the Statement of Claim and notice of expungement, with the FedEx tracking information available online.

The Arbitrator conducted a recorded, telephonic hearing on December 22, 2020 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.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 documents, considered the amount of payments 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 found that while Claimant contributed the entire settlement amount, expungement is still warranted because Claimant's contribution is reasonable given the small size of the settlement compared to the cost of an arbitration.

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

## **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 1782232 from registration records maintained by the CRD for Claimant Joseph Andrew Davis (CRD Number 4900161) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joseph Andrew Davis 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.

The claim, allegation, or information is false.

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

The Customer opened two accounts with Respondent represented by Claimant. The Customer's primary goal was tax deferment. Claimant's testimony confirmed that Claimant explained the process of a "back boor" individual retirement account ("IRA") plan. Using this plan, the accounts were opened in a traditional IRA. A very short time later, the traditional IRA was converted to a Roth IRA. Because of the way the Customer's tax preparer filed the Customer's return, an unnecessary tax obligation was created. This was not discovered until sometime later when the Internal Revenue Service notified the Customer of additional tax obligations. The Customer filed a complaint with Respondent and a settlement process began. No court action or arbitration was pursued. Respondent settled the claim through its insurance carrier for an amount that was economically advantageous to them. Claimant was covered by the same carrier and had to pay his deductible portion of this settlement. The Customer's allegation is clearly false because the entire process had been correctly explained to him and proper tax preparation would have avoided the unnecessary tax obligation.

The allegation is also erroneous because it did not arise from any misrepresentation on the part of Claimant. In addition, this expungement is recommended because keeping it on Claimant's record does not offer any public protection and has no regulatory value. It would in fact mislead anyone reviewing Claimant's BrokerCheck® Report.

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 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
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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 17, 2020      1 session		

One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing Date: December 22, 2020      1 session		

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Total Hearing Session Fees	=\$	100.00
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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**

Donald N. Tolin

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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**

***Donald N. Tolin***

Donald N. Tolin  
Sole Public Arbitrator

**01/16/2021**

Signature Date

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January 19, 2021

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