

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

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In the Matter of the Arbitration Between:

Claimant  
Dominic Joseph Carlo

Case Number: 20-01768

vs.

Respondent  
National Securities Corporation

Hearing Site: New York, New York

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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

This case was administered under the Special Proceeding option for simplified cases.

**REPRESENTATION OF PARTIES**

For Claimant Dominic Joseph Carlo: Tosh Grebenik, J.D., Judex Law, LLC, Broomfield, Colorado.

For Respondent National Securities Corporation: Fred N. Knopf, Esq., National Securities Corporation, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: June 3, 2020.

Dominic Joseph Carlo signed the Submission Agreement: June 3, 2020.

Statement of Answer filed by Respondent on or about: July 23, 2020.

National Securities Corporation signed the Submission Agreement: July 23, 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 expungement of Occurrence Numbers 1520252, 1547277, 1585290, and 1585291; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested that all forum fees and costs, including any member surcharges, be paid by Claimant.

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.

On February 7, 2021, Claimant advised that the customers in Occurrence Numbers 1520252, 1547277, 1585290, and 1585291 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on March 22, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The customers also 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 occurrences in the CRD.

On February 10, 2021, Claimant advised that he is not in possession of the settlement agreement related to Occurrence Number 1520252 and that a copy could not be located due to the age of the complaint. Claimant stated he was not involved in the settlement discussion. The Arbitrator considered the amount of payment made to any party to the settlement. Claimant testified that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator noted that Claimant paid the settlement amount but determined that expungement is still appropriate because Respondent paid the settlement and Claimant reimbursed Respondent pursuant to its firm policy.

The Arbitrator noted that the disputes related to Occurrence Numbers 1547277, 1585290, and 1585291 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, exhibits, Claimant's BrokerCheck® Report, 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 1520252 from registration records maintained by the CRD for Claimant Dominic Joseph Carlo (CRD Number 2731304) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominic Joseph Carlo 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:

The customer, an experienced, sophisticated investor, opened a non-discretionary account with Claimant in 2008-2009, a time of considerable market volatility. He made only 2-3 trades in his account during that period and received trade confirmations as well as monthly statements indicating his activity. In 2010, the customer filed a FINRA arbitration seeking \$35,000 in damages, alleging churning and unsuitability. Claimant's firm paid \$9,999 in settlement to avoid the cost and risk of defense. Claimant was required to reimburse this amount to the firm pursuant to firm policy. Claimant was not a party to the settlement agreement, which was not conditioned on non-opposition to expungement. Due to the age of the matter, the settlement agreement itself was not available. This occurrence should be expunged on the ground that it is clearly erroneous, false, or both. Claimant's recommendations were suitable for the client given his interests and risk parameters and were approved by him. Further, the amount of trading done belies any claim of churning.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1547277 from registration records maintained by the CRD for Claimant Dominic Joseph Carlo (CRD Number 2731304) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominic Joseph Carlo 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 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:

The customers opened non-discretionary IRA accounts with Claimant in 2008, indicating their objectives to be capital appreciation and speculation with an aggressive risk tolerance. The accounts were traded frequently for three years, despite Claimant's advice to limit market risk and loss when they began to decline in value. The customers subsequently complained of trading losses and churning. Claimant's firm denied their complaint, noting their failure to heed Claimant's advice to reduce trading activity and that the commissions charged were consistent with other firms on the Street. The customers took no further action. This occurrence should be expunged on the ground that it is clearly erroneous, false, or both. All trades in the account were approved by the customers, who did not take Claimant's advice to limit their risk exposure. The commissions were not excessive and were in line with industry custom and practice.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1585290 from registration records maintained by the CRD for Claimant Dominic Joseph Carlo (CRD Number 2731304) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominic Joseph Carlo 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 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:

The customer opened his non-discretionary account in 2003. His investment objective was aggressive growth with a matching risk tolerance, indicating a willingness to engage in high frequency, speculative trading. Refusing to take losses, his account did not perform well in the 2008-2009 bear market. In the fall of 2011, the customer complained to the Respondent about excessive trading and commissions in his account. Respondent denied his complaint, and the customer took no further action on it. This occurrence should be expunged on the ground that it is clearly erroneous, false, or both. All trades in the account were approved by the customer, who did not take Claimant's advice to limit his losses. The commissions were not excessive and were in line with industry custom and practice.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1585291 from registration records maintained by the CRD for Claimant Dominic Joseph Carlo (CRD Number 2731304) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominic Joseph Carlo 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 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:

Claimant became the broker of record on the customer's account in 2010. In March 2011, the customer complained to Claimant's firm of losses in his non-discretionary account, largely due to "excessive" commissions. The account was switched to other brokers at the firm. However, in February 2011, the customer had signed and returned an activity letter confirming his awareness of the transactions in the account and commissions paid. The firm denied his claim in July 2011, stating that the commissions charged were in line with those of other full-service brokers. The customer took no further action. This occurrence should be expunged on the ground that it is clearly erroneous, false, or both. All trades in the account were approved by the customer, and the commissions were not excessive.

### **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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent National Securities Corporation 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 24, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: March 22, 2021	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**

Robert E. Anderson

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

***Robert E. Anderson***

Robert E. Anderson  
Sole Public Arbitrator

**04/16/2021**

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 16, 2021

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