

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Philip Mathew Rodriguez

Case Number: 20-01769

vs.

Respondent
National Securities Corporation

Hearing Site: New York, New York

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 Philip Mathew Rodriguez: Tosh D. Grebenik, J.D., Judex Law, LLC, Broomfield, Colorado.

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

CASE INFORMATION

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

Philip Mathew Rodriguez 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 1312457, 1388091, 1507549, and 1636473; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested all forum fees and costs, including any member surcharges, be assessed against 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 1312457, 1388091, 1507549, and 1636473 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 February 23, 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.

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 occurrences in the CRD.

The Arbitrator reviewed the settlement documentation related to Occurrence Numbers 1388091 and 1636473, considered the amount of payments made to any party to the settlements, considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant contributed to the settlement amounts in Occurrence Numbers 1388091 and 1636473.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1507549, 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 conditioned on a party to the settlement not opposing the expungement request. FINRA Rule 2081 prohibits such conditional settlements; however, the settlement was executed on March 4, 2012, prior to the effective date of Rule 2081 on July 30, 2014. The Arbitrator further noted that Claimant contributed to the settlement amount in Occurrence Number 1507549.

The Arbitrator found that expungement is still appropriate in Occurrence Numbers 1388091, 1507549, and 1636473 for the reasons stated in the Award section.

The Arbitrator noted that the dispute related to Occurrence Number 1312457 was settled by oral agreement to reverse the trades, and, therefore, there was no settlement document 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 1312457 from registration records maintained by the CRD for Claimant Philip Mathew Rodriguez (CRD Number 2703233) with the understanding that, pursuant to Notice to Members 04-16, Claimant Philip Mathew Rodriguez 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 finding of fact:

The claim, allegation, or information is false.

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

Claimant reversed commissions on the transaction that was the subject of the claim. The customer accepted this without a settlement agreement. The customer did not respond to or participate in the expungement hearing despite being notified. The customer complained of excessive commissions and excessive trading causing losses in his account when, in reality, the losses were due to a down market. To demonstrate he valued the business relationship, Claimant reversed some of the commissions. The customer remained a client of Claimant.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1388091 from registration records maintained by the CRD for Claimant Philip Mathew Rodriguez (CRD Number 2703233) with the understanding that, pursuant to Notice to Members 04-16, Claimant Philip Mathew Rodriguez 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:

This customer spoke with Claimant weekly and was very involved in the selection of stock purchased in his portfolio. The customer asked Claimant to buy and sell the same stock in a single day. Yet, it took him one month to complain after shares were sold. The claim was not consistent with the evidence presented nor did it meet FINRA requirements.

Specifically, the customer complained that Claimant did not follow his instructions to sell his 50,000 shares of the Syntax-Brilliant Corporation ("BRLC") stock by the end of the day. Claimant insisted the customer did not ask him to sell the stock by the end of the day. Moreover, the customer waited an entire month before complaining that the stock had not been sold. The customer seemed to attempt to have Claimant pay for losses associated with bankruptcy filed by BRLC, even though Claimant had no responsibility for the bankruptcy being filed. Since there is no proof that the customer asked for the stock to be sold so quickly, and the customer waited so long to complain about it, the claim is false. The customer was fully refunded fees for which he was equally responsible. The customer who lodged this complaint was given sufficient notice to appear or respond to this hearing, but he did not participate. The claim is false and without merit, so this matter should be expunged from Claimant's record.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1507549 from registration records maintained by the CRD for Claimant Philip Mathew Rodriguez (CRD Number 2703233) with the understanding that, pursuant to Notice to Members 04-16, Claimant Philip Mathew Rodriguez 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:

All claims were proven false during the hearing; this was corroborated with evidence presented. The claim of unauthorized discretionary trading was factually impossible. The customer spoke with Claimant frequently and owned a business in the industry where many of his investments were placed. The customer's investments unfortunately were hit

hard when the market in which he held strong positions declined. National Securities Corporation (“NSC”) handled the investigation and made the decision to settle. The NSC attorney did not contest these and other facts presented in favor of Claimant during the hearing. The customer who lodged the complaint was given sufficient notice to appear or respond to this hearing, but he did not participate. The Arbitrator determine Claimant is entitled to expungement even though his name is in the settlement agreement.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1636473 from registration records maintained by the CRD for Claimant Philip Mathew Rodriguez (CRD Number 2703233) with the understanding that, pursuant to Notice to Members 04-16, Claimant Philip Mathew Rodriguez 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:

Most of the claims were not factually possible. Claimant did not have a fiduciary duty until after this claim was settled. There was not a margin on this account. Contracts were with National Securities Corporation, not Claimant, so breach of contract was not possible. Based on the customer’s objective to achieve short term profits, the two to three trades a month is not churning. Finally, this claim does not meet any elements of unsuitability as defined by FINRA. Claimant was not involved in the settlement at all. The customer who lodged the complaint was given sufficient notice to appear or respond to this hearing, but he did not participate. For these reasons, this occurrence shall be expunged from Claimant’s record.

5. 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 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

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: February 23, 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

Veronica Ann Williams

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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

Veronica Ann Williams

Veronica Ann Williams
Sole Public Arbitrator

04/05/2021

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 06, 2021

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