

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

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In the Matter of the Arbitration Between:

Claimant  
Vincent Michael Bonavia

Case Number: 20-01794

vs.

Respondent  
Valmark Securities, Inc.

Hearing Site: Boca Raton, Florida

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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 Vincent Michael Bonavia: Harris Freedman, Esq., Of Counsel, HLBS Law, Westminster, Colorado.

For Respondent Valmark Securities, Inc.: Benjamin J. Biard, Esq., Winget Spadafora Schwartzberg, LLP, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: June 5, 2020.

Vincent Michael Bonavia signed the Submission Agreement: June 5, 2020.

Statement of Answer filed by Respondent on or about: July 28, 2020.

Valmark Securities, Inc. did not sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of Form U5 amendments and those relevant portions of the Form U4 from registration records maintained by the Central Registration Depository (“CRD”) on the basis that the statement is defamatory in nature, misleading, inaccurate and/or erroneous.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of the Form U5 amendments and

those relevant portions of the Form U4 to include an amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary," a subsequent expungement of the Reason for Termination explanation on Claimant's CRD, and a deletion of the Termination Disclosure Reporting Pages in their entirety; compensatory damages in the amount of \$1.00 from Respondent; and any other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent requested: dismissal of Claimant's Statement of Claim in its entirety; costs and expenses of this arbitration, including forum fees and reasonable attorneys' fees; and any additional relief that is just and proper.

At the beginning of 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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator conducted a recorded, telephonic hearing on February 17, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

### **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. This is an unfortunate situation in which Claimant was a probationary employee about halfway through his ninety-day trial period, when his employer went on a week-long vacation cruise to Alaska and left Claimant in the office, along with others who share the space. Claimant worked in the office Monday through most of the day Thursday, but he made the unilateral decision to work from home Thursday afternoon. Claimant went to the office Friday morning, but then decided to work from home all day Friday. There had been some communications between Claimant and employer during the week, but they caught up on the work when the employer returned to the office the following Monday morning. However, at lunch, the employer learned from other staff that Claimant had not been present in the office for part of Thursday and all-day Friday. When the employer returned to the office after lunch, he asked Claimant if he worked Thursday and Friday, and Claimant said he did. When the employer confronted Claimant with his absences on Thursday and Friday, Claimant acknowledged that he was not physically present in the office on those days but indicated that he had made the decision to work from home.

The employer testified that he had a reasonable expectation that Claimant would be fully engaged in the office, answering the telephone, etc. during his own vacation absence. In view of the probationary status and the confrontation that occurred upon his return from vacation, the employer made the immediate decision to terminate Claimant's employment.

The employer then posted the termination to Claimant’s Form U5 as required by FINRA, which is “Terminated by Independent Contractor/Member Office, Non-Compliance related.”

Claimant testified that he had previously worked from home on this job and that he had Virtual Private Network “VRNet” on his laptop computer, which provided security for him to work from home. Claimant said there was no intent to mislead and no conduct during the provisional period that warranted termination. Furthermore, because Claimant never completed his probation, no employment contract existed to be terminated. Since the confrontation occurred during the provisionary period, the Form U5 should reflect a mutually agreed separation.

The Arbitrator has found that regardless of the conflicting understanding and/or misunderstanding between the parties, the fact is that Claimant’s status was probationary, the employer was free to terminate the relationship at will, and he did so. The employer was then legally obligated to reflect the event on Claimant’s Form U5. As the moving party, Claimant had the burden of proof to establish error in the factual record and failed to do so. Therefore, the Arbitrator has denied Claimant’s request for expungement from his registration records maintained by the CRD and has assessed the forum fees against Claimant, the moving party, as required by FINRA rules.

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 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

**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 28, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00

Hearing:	February 17, 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**

James W. Geiger

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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**

***James W. Geiger***

James W. Geiger  
Sole Public Arbitrator

**02/23/2021**

Signature Date

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February 23, 2021

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