

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James V. Peters

Case Number: 20-01838

vs.

Respondents
Centaurus Financial, Inc.
Northwestern Mutual Investment Services, LLC

Hearing Site: Los Angeles, California

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. Members

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

REPRESENTATION OF PARTIES

For Claimant James V. Peters (“Claimant”): Zachary T. Hayes-Macaluso, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent Centaurus Financial, Inc. (“Centaurus”): Michael T. West, Esq. and Bryan A. Gless, Esq., Centaurus Financial, Inc., Anaheim, California.

For Respondent Northwestern Mutual Investment Services, LLC (“NMIS”): Thomas K. Anderson, Esq., Northwestern Mutual Investment Services, LLC, Milwaukee, Wisconsin.

Centaurus and NMIS are hereinafter collectively referred to as the “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: June 10, 2020.
Claimant signed the Submission Agreement: June 10, 2020.

Statement of Answer filed by Centaurus on or about: June 23, 2020.
Centaurus signed the Submission Agreement: June 23, 2020.

Statement of Answer filed by NMIS on or about: July 27, 2020.
NMIS signed the Submission Agreement: July 27, 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, Centaurus did not oppose Claimant’s expungement request made in the Statement of Claim.

In the Statement of Answer, NMIS did not oppose Claimant’s expungement request made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 990350 and 2039298 from Claimant’s CRD records pursuant to a finding that the claims, allegations and information are false in accordance with FINRA Rule 2080(b)(1)(C);
2. Compensatory damages in the amount of \$1.00 from Centaurus; and
3. Compensatory damages in the amount of \$1.00 from NMIS.

In the Statement of Answer, Centaurus requested:

1. Denial of all requests for relief, including but not limited to Claimant’s request for \$1.00 in compensatory damages; and
2. All forum fees for hearing sessions in this matter be assessed against Claimant in accordance with Rule 13805(d) of the Code of Arbitration Procedure (“Code”).

In the Statement of Answer, NMIS requested:

1. Denial of Claimant’s request for \$1.00 in compensatory damages; and
2. All forum or hearing fees relating to this matter be assessed to Claimant.

At the close of the hearing, Claimant withdrew the request for \$1.00 in damages from Centaurus and NMIS.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 2, 2020, Claimant filed an Affidavit signed by Claimant’s counsel advising that the customers in Occurrence Numbers 990350 and 2039298 (“Customers”) were served with the Statement of Claim and the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 21, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents participated in the expungement hearing and, as stated in each Statement of Answer, did not oppose the request for expungement.

The Customers did not participate in the expungement hearing. The customer in Occurrence Number 2039298 submitted a letter dated January 5, 2021, to express opposition to Claimant's expungement request ("Customer Letter"). 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 noted that the disputes related to Occurrence Numbers 990350 and 2039298 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: Claimant's testimony; Claimant's BrokerCheck® Report; Claimant's Exhibits; and the Customer Letter.

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:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 990350 and 2039298 from registration records maintained by the CRD for Claimant James V. Peters (CRD Number 2665577) with the understanding that, pursuant to Notice to Members 04-16, Claimant James V. Peters 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:

Occurrence Number 990350

The preponderance of the evidence presented at the expungement hearing contradicts the allegations described in the underlying action. The CRD records for Occurrence Number 990350 state that "[c]ustomer alleges representative misrepresented information regarding the transfer of his annuity fund and IRA Loss of money in the stock market the client incurred at the end of 2000 (Around 11/2000 Approximately)." The evidence established that

“misrepresentation” about the transfer of annuity funds alleged by the customer was based on the notion that a “free look” meant that the customer would not be charged any fees or be exposed to a market loss. Claimant credibly testified that this was explained to the customer before investing and after the complaint was made. The customer benefitted from the “free look” by avoiding fees and surrender charges and having the then-current market value of his funds returned. The loss in the customer’s annuity balance was due to market conditions, not misrepresentations by Claimant. The customer has not pursued the matter further.

Occurrence Number 2039298

The preponderance of the evidence presented at the expungement hearing contradicts the allegations described in the underlying action. The CRD records for Occurrence Number 2039298 state that “[d]uring the period 2009 through 2019 the customer alleges the Registered Representative mismanaged and misrepresented his variable annuity contract allegedly causing financial loss and a lapse in contract benefits.” However, the testimony and documents provided indicate facts to the contrary. The transfer of the management of the customer’s funds to a new broker dealer, and the possibility of loss of value which underpinned the customer’s complaint, was authorized by the customer. The customer also explicitly agreed that the fees related to the transfer would be, and were treated, as withdrawals. The Arbitrator notes that the customer submitted the Customer Letter for the Arbitrator’s consideration in response to the notification of the expungement hearing. The customer writes, in part, “[i]n view of Mr. Peters’ repeated misrepresentations to me about my Jackson annuity, I am against the expungement of this from his CRD record.” The Arbitrator thoughtfully considered the customer’s input. However, this recent submission of the Customer Letter does not overcome the weight of the evidence considered. Based on the evidence cited above, it is clear the investments were made with the authority and agreement of the customer. Thus, the Arbitrator finds this complaint to be false and recommends expungement.

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 parties, Respondents are each 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: October 2, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: January 21, 2021	1 session	

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

Andrew M. Mintzer

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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

Andrew M. Mintzer

Andrew M. Mintzer
Sole Public Arbitrator

02/04/2021

Signature Date

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February 04, 2021

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