

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Josh Alan Frankel

Case Number: 20-01846

vs.

Respondent
Chase Investment Services Corp.
HSBC Securities (USA) Inc.

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. Members

REPRESENTATION OF PARTIES

For Claimant Josh Alan Frankel: Jennifer P. Farrar, Esq., Farrar Law, PLLC, Tomball, Texas.

For Respondent Chase Investment Services Corp. (“Chase”): Thomas J. Cahill, Esq., Duane Morris LLP, New York, New York.

For Respondent HSBC Securities (USA) Inc. (“HSBC”): Ira G. Rosenstein, Esq., Morgan, Lewis & Bockius LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 11, 2020.

Amended Statement of Claim filed on or about: May 21, 2021.

Josh Alan Frankel signed the Submission Agreement: June 11, 2021 and August 20, 2021.

Statement of Answer filed by Respondent Chase on or about: October 13, 2020.

Answer to the Amended Statement of Claim filed on or about: August 13, 2021.

Chase signed the Submission Agreement: October 16, 2020.

Statement of Answer to the Amended Statement of Claim filed by Respondent HSBC on or about: August 20, 2021.

HSBC signed the Submission Agreement: August 20, 2021.

CASE SUMMARY

In the Statement of Claim, and Amended 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, and Answer to the Amended Statement of Claim, Respondent Chase took no position on Claimant’s expungement request, denied any allegations of wrongdoing made in the Statement of Claim, and Amended Statement of Claim, and asserted various affirmative defenses.

In the Statement of Answer to the Amended Statement of Claim, Respondent HSBC took no position on Claimant’s expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1468557 and 1313408; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested expungement of Occurrence Numbers 1236038, 1313408, 1315154, 1468556, 1468557, and 1411166; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, and Answer to the Amended Statement of Claim, Respondent Chase requested that Claimant’s claim for \$1.00 in compensatory damages be denied.

In the Statement of Answer to the Amended Statement of Claim, Respondent HSBC requested that Claimant’s claim for \$1.00 in compensatory damages be denied and that all costs and fees associated with the claim be assessed solely 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 November 1, 2021, Claimant advised that the customers in Occurrence Numbers 1313408, 1315154, 1468556, 1468557, and 1411166 (the “Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing. Additionally, on November 3, 2021, Claimant filed an Affidavit advising that the Customer in Occurrence Number 1236038 is deceased.

The Arbitrator conducted a recorded telephonic hearing on November 11, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents participated in the expungement hearing and did not oppose the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers in Occurrence Numbers 1313408, 1315154, 1468556, 1468557, and 1411166 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 1236038, 1315154, and 1411166 were not settled and, therefore, there were no settlement documents to review.

The Arbitrator did not review the settlement documents in Occurrence Numbers 1313408, 1468556, and 1468557. The Arbitrator noted that, upon diligent search, the settlement documents could not be produced due to the age of the complaints. By Affidavit dated November 19, 2021, Claimant affirmed that he did not have a copy of the settlement agreements, he did not participate in the settlements, and he did not contribute to the settlement amounts. The Arbitrator considered the amount of payments made to any party to the settlements and noted that the dates of the settlements preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report, the hearing exhibits, and Claimant's Affidavit regarding the settlement agreements.

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 1236038 from registration records maintained by the CRD for Claimant Josh Alan Frankel (CRD Number 2634443) with the understanding that, pursuant to Notice to Members 04-16, Claimant Josh Alan Frankel 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 in the underlying dispute claimed damages in the amount of \$28,000. Respondent Chase denied the claim and paid no amount in settlement of the claim. Claimant credibly testified that the Customer's complaint was related to the drop in market price of a mutual fund in which the Customer, upon the recommendation of Claimant, and after an asset allocation review and full disclosure of risks including market fluctuation, had invested. The investment made up less than 5% of the Customer's entire portfolio. The Customer accepted the advice of Claimant to continue to hold the investment as he continued to receive income from the fund. The fund value eventually returned to a price above the Customer's purchase price, and he continued as a Customer of Respondent Chase. Claimant's BrokerCheck® Report shows no record of any further formal complaint or arbitration having been filed by the Customer in connection with this occurrence and the time to do so has expired. The credible testimony of Claimant, as well as the facts outlined in his Statement of Claim as evidenced by the expungement hearing exhibits, support a finding that the Customer's complaint is clearly erroneous and false.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1313408 from registration records maintained by the CRD for Claimant Josh Alan Frankel (CRD Number 2634443) with the understanding that, pursuant to Notice to Members 04-16, Claimant Josh Alan Frankel 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 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 in the underlying dispute claimed damages in the amount of \$20,533.44. Respondent Chase settled the claim in the amount of \$13,000.00 and Claimant made no individual contribution to the settlement. Claimant credibly testified that the Customer's complaint related to the drop in the annuity renewal rate below the CD rates Respondent Chase was then offering. The Customer liquidated the annuity on an unsolicited basis and threatened to close all of his accounts at Respondent Chase unless he was reimbursed for his early withdrawal fees and charges. Claimant credibly testified that following this incident, the Customer introduced his son to Claimant, and some members of the Customer's family became customers of Respondent Chase. The credible testimony of Claimant, as well as the facts outlined in his Statement of Claim as evidenced by the expungement hearing exhibits, and Claimant's affidavit regarding settlement agreements, support a finding that the Customer's complaint is clearly erroneous and false.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1315154 from registration records maintained by the CRD for Claimant Josh Alan Frankel (CRD Number 2634443) with the understanding that, pursuant to Notice to Members 04-16, Claimant Josh Alan Frankel 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 Customers in the underlying dispute claimed damages in the amount of \$8,361.71. Respondent Chase denied the claim and paid no amount in settlement of the claim. Claimant credibly testified that the Customers' complaint related to the drop in market price of a mutual fund in which they, upon the recommendation of Claimant, and after a complete diagnostic review of all of their assets and full disclosure of risks including market fluctuation, had invested. The investment made up less than 3% of their entire portfolio. The Customers rejected the advice of Claimant to continue to hold the investment, notwithstanding the dip in the market, which could then have reduced their overall risk. Claimant's BrokerCheck® Report shows no record of any further formal complaint or arbitration having been filed by the Customers in connection with this occurrence and the time to do so has expired. The credible testimony of Claimant, as well as the facts outlined in his Statement of Claim as evidenced by the expungement hearing exhibits, support a finding that the Customer's complaint is clearly erroneous and false.

4. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1468556 and 1468557 from registration records maintained by the CRD for Claimant Josh Alan Frankel (CRD Number 2634443) with the understanding that, pursuant to Notice to Members 04-16, Claimant Josh Alan Frankel 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds, and the claim, allegation, or information is false.

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

The Customers in the underlying disputes submitted complaints relating to the auction rate securities (“ARS”) that Respondent HSBC had sold to them. Specifically, the Customer in Occurrence Number 1468556 complained about the problems with the ARS market and demanded liquidity. Likewise, the Customers in Occurrence Number 1468557 alleged that Claimant failed to inform them of the potential illiquidity of the ARS. These Customer complaints involved one or more ARS with a notional value of \$200,000 in the case of the Customer in Occurrence Number 1468556, and \$100,000.00 in the case of the Customers in Occurrence Number 1468557. Respondent HSBC agreed to voluntarily repurchase the ARS from the Customers at par value in order to provide liquidity. Claimant did not participate in the conduct or events that caused the loss of liquidity in the ARS market. Claimant did not commit a sales practice violation and had no control over the market freeze that prevented liquidation of the ARS. Claimant was not a party to, and did not agree to or participate in, the repurchase agreements between Respondent HSBC and the Customers. Claimant did not make any payments to any of the Customers and was not asked to and did not contribute to the repurchase amount. The matter was reported as a settlement pursuant to the requirements of FINRA Regulatory Notice 09-12. The credible testimony of Claimant, as well as the facts outlined in his Statement of Claim as evidenced by the expungement hearing exhibits, and Claimant’s affidavit regarding settlement agreements, support a finding that the complaints of the Customers are clearly erroneous and false, and that Claimant was not involved in any investment-related sales practice violation.

5. The Arbitrator recommends the expungement of all references to Occurrence Number 1411166 from registration records maintained by the CRD for Claimant Josh Alan Frankel (CRD Number 2634443) with the understanding that, pursuant to Notice to Members 04-16, Claimant Josh Alan Frankel 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 Customers in the underlying dispute claimed damages in the amount of \$53,019.00. Respondent HSBC denied the claim and paid no amount in settlement of the claim. Claimant credibly testified that the Customers were concerned about protecting the wife’s income upon the death of her husband, and that after several meetings at which Claimant provided full disclosure of the risks, fees and expenses, and withdrawal restrictions and privileges, the Customers purchased the annuities in question. Claimant does not know, and the evidentiary record does not show, the basis for the Customers’ allegation that

“the variable annuities were inappropriate and unsuitable.” Claimant’s BrokerCheck® Report shows no record of any further formal complaint or arbitration having been filed by the Customers in connection with this occurrence and the time to do so has expired. The credible testimony of Claimant, as well as the facts outlined in his Statement of Claim as evidenced by the expungement hearing exhibits, support a finding that the Customer’s complaint is clearly erroneous and false.

6. 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Chase and HSBC are each assessed the following:

Member Surcharge	= \$	150.00
------------------	------	--------

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

April 14, 2021, postponement requested by Claimant	= \$	50.00
--	------	-------

Total Postponement Fees	= \$	50.00
-------------------------	------	-------

The Arbitrator has assessed the total postponement fees to Claimant.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

April 14, 2021, cancellation requested Claimant	= \$	600.00
---	------	--------

Total Last-Minute Cancellation Fees	= \$	600.00
-------------------------------------	------	--------

The Arbitrator has assessed the total last-minute cancellation fees to Claimant.

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: December 9, 2020	1 session	
Two (2) hearing sessions on expungement request @ \$50.00/session	= \$	100.00
Hearing: February 11, 2021	1 session	
November 11, 2021	1 session	
<hr/>		
Total Hearing Session Fees	= \$	150.00

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

Michele S. Riley

-

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

Michele S. Riley

Michele S. Riley
Sole Public Arbitrator

12/09/2021

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.

December 10, 2021

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