

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

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In the Matter of the Arbitration Between:

Claimant  
Paul Coleman

Case Number: 20-01857

vs.

Respondent  
Chase Investment Services Corp.  
HSBC Securities

Hearing Site: Hartford, Connecticut

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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. Members

**REPRESENTATION OF PARTIES**

For Claimant Paul Coleman: from June 15, 2020 to October 2, 2020: David E. Robbins, Esq., Kaufmann Gildin & Robbins LLP, New York, New York; from October 6, 2020 to November 18, 2020: Dochter Kennedy, J.D., Advisor Law LLC, Westminster, Colorado; and as of November 17, 2021: Kevin Mirch, Esq. and Marie Mirch, Esq., Mirch Law Firm, LLP, San Diego, California.

For Respondent Chase Investment Services Corp. (“Chase”): Michael A. Gross, Esq. and Alyson Terrell, Esq., Ulmer & Berne LLP, Boca Raton, Florida.

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

**CASE INFORMATION**

Expungement Statement of Claim filed on or about: June 15, 2020.  
Paul Coleman signed the Submission Agreement: June 15, 2020.

Statement of Answer filed by Respondent Chase on or about: August 3, 2020.  
Chase Investment Services Corp. signed the Submission Agreement: August 21, 2020.

Statement of Answer filed by Respondent HSBC on or about: August 17, 2020.  
HSBC Securities signed the Submission Agreement: November 18, 2020.

Third Amended Statement of Claim for Expungement filed on or about: June 24, 2021.  
Statement of Answer to Third Amended Statement of Claim for Expungement filed by Respondent Chase on or about: August 6, 2021.

Statement of Answer to Third Amended Statement of Claim for Expungement filed by Respondent HSBC on or about: August 6, 2021.

### **CASE SUMMARY**

In the Expungement Statement of Claim, as amended, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

Unless specifically admitted in the Statement of Answer to the Statement of Claim for Expungement, as amended, Respondent Chase denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Statement of Answer to the Statement of Claim for Expungement, as amended, Respondent HSBC asserted it does not oppose Claimant’s requests for expungement but does object to Claimant’s demand for \$1.00 in damages from Respondent HSBC.

### **RELIEF REQUESTED**

In the Expungement Statement of Claim, as amended, Claimant requested: expungement of Occurrence Numbers 1593967, 1557140, 1461267, 1438497, 1388590; 1425350, 1399897, 1458985; and compensatory damages in the amount of \$1.00.

In the Statement of Answer to the Statement of Claim for Expungement, as amended, Respondent Chase requested that Claimant’s requests for expungement and relief pertaining to Respondent Chase matters should be denied, and Respondent Chase should not be forced to incur further costs and expenses to defend itself against Claimant’s untimely claims.

In the Statement of Answer to the Statement of Claim for Expungement, as amended, Respondent HSBC requested that all costs and fees be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

Claimant initially filed his Expungement Statement of Claim in this matter on June 11, 2020. Prior to service upon Respondents by FINRA, Claimant filed a modified Expungement Statement of Claim on June 15, 2020 without changing the title of the pleading. Therefore, FINRA served only the June 15, 2020 version of the Expungement Statement of Claim upon Respondents.

On August 3, 2020, Respondent Chase filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure (“Code”), to which Claimant objected on September 2, 2020 and Respondent Chase replied on September 4, 2020.

On October 9, 2020, Respondent HSBC filed a Motion to Dismiss pursuant to Rule 13206 of the Code.

On January 15, 2021, Claimant filed a Motion to Amend to which Respondents objected. The Arbitrator denied the Motion to the extent that it sought to add parties or increase the amount of monetary relief requested.

On May 28, 2021, the Arbitrator issued an Order that, among other things, granted Claimant leave to file a Third Amended Statement of Claim, which Claimant filed on June 24, 2021.

On August 6, 2021, Respondent Chase filed a Motion to Dismiss Claimant's Third Amended Statement of Claim for Expungement pursuant to Rule 13206 of the Code. On December 17, 2021, Claimant filed a response in which he asserted, among other things, that Claimant's action is not time barred when the doctrines of the discovery rule, equitable tolling and equitable estoppel are applied.

On August 6, 2021, Respondent HSBC filed a Motion to Dismiss Claimant's Third Amended Statement of Claim for Expungement, asserting that the requests for expungement are ineligible for arbitration pursuant to Rule 13206 of the Code. In his December 17, 2021 response, Claimant stated that the concealment of documents supports application of the discovery rule to overcome the time limits imposed by FINRA Rule 13206. In its December 31, 2021 reply, Respondent HSBC asserted: Claimant was aware of the disclosures he seeks to have expunged when they were made in 2008, 2009, and 2011; the discovery rule does not apply to FINRA's eligibility rule; even if a discovery rule applied to FINRA's eligibility rule, it would not apply to Claimant's request for expungement; and tolling principals do not apply.

On December 31, 2021, Respondent Chase filed a reply in support of Respondent HSBC's August 6, 2021 Motion to Dismiss Claimant's Third Amended Statement of Claim.

On December 31, 2021, Respondent HSBC filed a notice of joinder to Respondent Chase's August 6, 2021 reply in support of Respondent HSBC's Motion to Dismiss Third Amended Statement of Claim.

On January 7, 2022, the Arbitrator heard oral arguments on Respondent Chase's and Respondent HSBC's respective Motions to Dismiss Claimant's Third Amended Statement of Claim for Expungement. On January 7, 2022, the Arbitrator granted the Motion to Dismiss on the grounds that:

The eligibility rule in essence provides a Claimant with six years to file an expungement claim. The six years run from the date of the "occurrence or event." In this case, the parties agree that there are seven items which Claimant seeks to expunge. The seven events occurred in 2008, 2009 and 2011. Therefore, under a reading of the eligibility rule, the claims are time barred, as this proceeding was instituted in 2020, well beyond the time period in the eligibility rule. Claimant argues that the discovery rule should apply. However, this Arbitrator finds that the rule does not apply for two reasons: (1) the discovery rule cannot supersede the eligibility rule. If we apply the discovery rule to any arbitration, a claimant can argue that they discovered the claim at any point in time after the six years and be eligible for expungement; and (2) the discovery rule applies to a situation in which a party is led to believe that he/she has no claim. In this case, the events took place at the time that the 7 events were placed on the CRD. There is nothing to discover.

Claimant seems to argue that the discovery rule applies to his case because he discovered a “new factual basis” for his expungement request. The discovery rule does not apply to a new factual basis, where Claimant, as here, knows he has the right and must bring a claim within the six-year period from the date of the incident or occurrence. Claimant argues that there should be estoppel. This argument is particularly based on the letter from Claimant’s prior counsel, dated November 10, 2015. The letter states, in part: “We request that your firm file the Motion to Expunge as soon as possible, and in any event, before the above arbitration is closed as a result of settlement and award.” Referenced in the letter is FINRA Arbitration Number 13-00140. The letter (a) does not reference any other matters for expungement, particularly the matters which are the subject of this Arbitration (only one matter referenced in the letter); (b) the matter is simply a request to act; and (c) there is no indication from Ulmer & Berne, LLP that they agreed to do any work on any expungement. As a result, the Arbitrator cannot find any fraud in this matter, even if estoppel was an appropriate reason for tolling.

Claimant argues that there is some sort of continuous course of conduct, which warrants a tolling of the six-year rule. The relevant events occurred in 2008, 2009 and 2011, which is the reporting of the events. There is simply no other action, with regard to the reporting of the events, which would warrant tolling. In addition, by letter dated November 18, 2011, from Claimant to FINRA, Claimant acknowledges five customer complaints, evidencing that Claimant was aware of numerous complaints against him, and had ample time to file a Claim for Expungement within the time frame set by the eligibility rule.

Finally, Claimant argues that the dates of the events on the CRD are inaccurate. Apparently, the argument is that all of the dates are wrong. The Arbitrator finds this claim nothing less than incredible. The argument fails without proof. In this case, the claims are well beyond the six-year eligibility rule, so even assuming the dates are several days wrong, the result would be the same. The Arbitrator accepts the dates on the CRD as true.

Respondent Chase’s and Respondent HSBC’s respective Motions to Dismiss pursuant to Rule 13206 of the Code are granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant’s Statement of Claim for Expungement, as amended, is dismissed in its entirety pursuant to FINRA Rule 13206(a) of the Code.

### **FEES**

Pursuant to the Code of Arbitration Procedure (“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 parties Respondent Chase and Respondent HSBC are each assessed the following:

Member Surcharge = \$ 150.00

**Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

October 13, 2020, cancellation requested by Claimant = \$ 100.00

December 8, 2020, cancellation requested by Claimant = \$ 100.00

November 3, 2021, cancellation requested by Claimant = \$ 100.00

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Total Late Pre-Hearing Cancellation Fees = \$ 300.00

The Arbitrator has assessed \$250.00 of the late pre-hearing cancellation fees to Claimant.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees jointly and severally to Respondents.

**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:

Four (4) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 200.00

Pre-Hearing Conferences: November 4, 2020 1 session

March 10, 2021 1 session

May 26, 2021 1 session

January 7, 2022 1 session

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Total Hearing Session Fees = \$ 200.00

The Arbitrator has assessed \$150.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$50.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATOR**

Robert M. Singer

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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**

***Robert M. Singer***

Robert M. Singer  
Sole Public Arbitrator

**02/03/2022**

Signature Date

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February 03, 2022

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