

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard Ramos

Case Number: 20-01862

vs.

Respondent
Ted H Smail

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. Customer

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

Claimant Richard Ramos (“Claimant”) appeared pro se.

Respondent Ted H Smail (“Respondent”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: June 12, 2020.

Claimant signed the Submission Agreement: June 11, 2020.

Statement of Answer filed by Respondent on or about: September 3, 2020.

Respondent signed the Submission Agreement: July 7, 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 opposed Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested for expungement of Occurrence Number 2052592 from his CRD records.

In the Statement of Answer, Respondent did not set forth a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge having read the pleadings and other materials filed by the parties.

Respondent is the customer in the underlying complaint in this case. As such, the Arbitrators found that he was served with Statement of Claim and notice of expungement.

The Arbitrators conducted a recorded, telephonic hearing on January 12, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Respondent received due notice of the hearing and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, opposed the request for expungement.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel noted that the dispute related to Occurrence Number 2052592 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim with Exhibits and Claimant's testimony.

AWARD

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

The Panel recommends the expungement of all references to Occurrence Number 2052592 from registration records maintained by the CRD for Claimant Richard Ramos (CRD Number 5524250) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Ramos 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 12805 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:

The claim for unsuitable investments was false. There were no unsuitable investments. Respondent claimed that Claimant had made misrepresentations about the tax consequences of an IRA contribution. The Panel unanimously found that Claimant made no such misrepresentation.

The Panel found that Respondent instructed Claimant to make certain contributions to Respondent's IRA accounts. Claimant-broker made the contributions. The contributions were not tax deductible. Despite Claimant's instructions to Respondent to check with an accountant to determine tax deductibility, Respondent did not check tax deductibility. Respondent attempted to deduct IRA contributions and was told that he could not. Respondent wrongly blamed Claimant for the non-deductibility of the IRA contributions.

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 = \$ 1,575.00

**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 Claimant's firm, LPL Financial LLC is assessed the following:

Member Process Fee = \$ 3,750.00

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 the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-hearing Conference: October 12, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing Date: January 12, 2021 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Steven Gourley	-	Public Arbitrator, Presiding Chairperson
McKinley Perkins, III	-	Public Arbitrator
Jeffrey E. Skogsbergh	-	Non-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.

Concurring Arbitrators' Signatures

Steven Gourley

Steven Gourley
Public Arbitrator, Presiding Chairperson

01/26/2021

Signature Date

McKinley Perkins, III

McKinley Perkins, III
Public Arbitrator

01/26/2021

Signature Date

Jeffrey E. Skogsbergh

Jeffrey E. Skogsbergh
Non-Public Arbitrator

01/27/2021

Signature Date

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January 27, 2021

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