

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jason Todd Skolnick

Case Number: 20-01869

vs.

Respondent
Purshe Kaplan Sterling Investments

Hearing Site: Boston, Massachusetts

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 Jason Todd Skolnick: Benjamin Winograd, J.D. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Purshe Kaplan Sterling Investments (“PKSI”): David Purcell, Esq., Purshe Kaplan Sterling Investments, Albany, New York.

CASE INFORMATION

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

Jason Todd Skolnick signed the Submission Agreement: June 12, 2020.

Statement of Answer filed by Respondent on or about: July 20, 2020.

PKSI signed the Submission Agreement: July 20, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 2066807; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief

that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to the imposition of the compensatory damages in the amount of \$1.00 requested in the Statement of Claim.

At the outset 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.

On December 15, 2020, Claimant filed an Affidavit signed by Claimant's counsel advising that the customer in Occurrence Number 2066807 ("Customer") was served with the Statement of Claim and with notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 26, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing. The Customer also did not participate in the expungement hearing. The Arbitrator found that Respondent and the Customer 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant paid the entirety of the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the testimony of Claimant; the Statement of Claim; the Statement of Answer; Claimant's February 24, 2017, letter to the Customer terminating three (3) accounts; Respondent PKSI's complaint denial letter to the Customer; the Customer's Securities and Exchange Commission ("SEC") Complaint Form; the SEC's Office of Investor Education and Advocacy's email to Claimant; the April 17, 2006, Change of Dealer form, used to replace the pre-existing advisor broker; a list of the 'gross commission/trails' paid between 2017-2019; and emails Claimant wrote to the Customer asking him to get a replacement investment advisor.

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 2066807 from registration records maintained by the CRD for Claimant Jason Todd Skolnick

(CRD Number 2656136) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 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:

Summary of Claim

The CRD records reflect that the Customer made a complaint, dated April 10, 2019, alleging that Claimant’s firm had been paid \$11,371.54 “in error” inasmuch as Claimant was no longer providing services and, therefore, was not entitled to said commissions. The Customer also stated that he was unaware that the commissions were still being paid to Claimant until it was brought to his attention by a replacement investment advisor, and therefore the Customer sought to recover \$11,371.54. The foregoing purportedly improper conduct allegedly occurred between December 24, 2017, and April 3, 2019. Respondent PKSI denied liability in its reply to the complaint in a letter dated May 1, 2019. The Customer received notice of the expungement proceedings but did not enter an appearance or otherwise participate at the telephonic hearing held on January 26, 2021. PKSI did not participate in the hearing either but does not object to an expungement of this complaint from Claimant’s CRD records.

Factual Background

Claimant started his career in 1995 as a licensed registered advisor. Since 2005 he has been a principal in his own firm (First National Corporation, a registered investment advisor) and has been affiliated with Respondent since 2006. Claimant is licensed per the Series 7, 31, 63, 65 and SIE examinations; has over 150 household clients whose investments he manages directly and another 100 that he serves jointly with his business partner. The Customer was referred to Claimant in 2006 by the Customer’s accountant and, after several meetings, Respondent PKSI was engaged to service the John Hancock USA 401k plan for the Customer’s dental practice. The Customer and his partner were the trustees for the plan.

On or about June 1, 2006, the Customer engaged Claimant to take over management of some of his other investments, including four (4) taxable and retirement Charles Schwab accounts with a “Growth” investment objective. Claimant credibly testified that he and the Customer had quarterly conversations until sometime in the latter part of 2016 or early 2017

when there was a disagreement over investments in the Customer's personal (non-401K) accounts. Claimant testified that the Customer wanted to change to "Aggressive" investments, which Claimant declined to make because he believed such investments were unsuitable. Subsequently, the Customer became antagonistic and belligerent toward Claimant and his staff. The Customer terminated the relationship in a letter dated February 24, 2017, which identified three (3) accounts but the Customer's letter did not terminate Claimant or Respondent PKS's role with the 401K plan. The Customer had an opportunity to add the 401k plan when he received Claimant's confirmation letter, which plainly identified the three accounts to be transferred to another investment advisor. Claimant testified that the Customer had asked him to stay on as investment advisor for the 401K plan until a replacement investment advisor could be found. Moreover, Claimant credibly testified, and the record reflects that his repeated requests that the Customer transfer the 401K plan to another broker were ignored by the Customer. It should be noted that the Customer's dental practice added a new partner, who was supposed to become the sole trustee, but there is no indication that Claimant and the new trustee ever met or that Claimant's requests for the practice to appoint a new broker were ever passed on to the new trustee.

In any event, on May 1, 2019, after finding that (contrary to the Customer's assertions) the commissions were properly paid, Respondent PKS denied the Customer's demand for a return of \$11,371.54 in commissions. Claimant testified that the commissions would not have been paid to the Customer, but instead to the investment advisor who managed the plan as the broker of record. Nevertheless, shortly after receiving Respondent PKS's denial letter, the Customer filed a complaint with the U.S. Securities and Exchange Commission ("SEC"). In a February 21, 2020, email, the SEC's Office of Investor Education and Advocacy asked Claimant to contact the Customer and let the SEC know the outcome. By this time, Respondent PKS had washed its hands off the matter inasmuch as, they said, the 401K plan was managed by Claimant's firm and was no longer Respondent PKS's responsibility.

Claimant was understandably alarmed by how this matter was escalating and decided, after consultation with an attorney, to pay the Customer the commissions amount, even though a portion of the amount had been retained by Respondent PKS and had never been received by Claimant. Accordingly, on April 9, 2020, Claimant, his firm (First National Corporation), and the Customer executed a settlement agreement that set forth the facts herein, admitted no wrongdoing, and did not contain any provisions making payment of the settlement contingent on the Customer's agreement not to participate in these proceedings.

Claimant's Counsel has formally represented that the John Hancock USA prospectus, which would have addressed payment of commissions, could not be located because the 401K plan was established with a previous advisor long before Claimant's involvement began in 2006. Counsel also represented that the April 17, 2006, Change of Dealer form, used to replace the pre-existing advisor broker, along with a list of the 'gross commission/trails' paid between 2017-2019 were the only records Claimant was able to obtain.

Conclusion

The foregoing leads the Arbitrator to conclude that (i) Claimant made reasonable efforts to ensure that the Customer knew that it was the Customer's responsibility to appoint a new investment advisor for the 401K plan; (ii) Respondent PKS confirmed that the commissions were disclosed to the Customer in John Hancock USA's prospectus, and therefore such

information was known or should have been known to him and his agents over the two year period that they were paid to Claimant; (iii) it is unclear if the Customer suffered any actual losses because in all likelihood his investment advisor would have claimed the commissions as the replacement broker of record; (iv) to his detriment, Claimant graciously allowed the Customer more than ample time to find a replacement broker; and (v) there is nothing in the history of Claimant's 25+ year career that indicates any pattern of customer complaints or other CRD disclosures.

Arbitrator's Recommendation

Claimant presented persuasive documentary and credible testimonial evidence to support a finding in accordance with FINRA Rule 2080 that he was not involved in the any investment-related misappropriation or conversion of funds; and the disclosure is based on a Customer's claim, allegation or information that is false. Moreover, I did not uncover any meaningful investor protection or regulatory value that could be achieved by preserving this complaint on Claimant's CRD records. Therefore, I am recommending expungement of this CRD disclosure.

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: October 6, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: January 26, 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

Denise L. Presley

-

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

Denise L. Presley

Denise L. Presley
Sole Public Arbitrator

02/03/2021

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.

February 03, 2021

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