

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Chadwick K. Watson and
Jeffrey J. Furniss

Case Number: 20-01893

vs.

Respondent

Lincoln Financial Advisors Corporation

Hearing Site: Baltimore, Maryland

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 Persons vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Chadwick K. Watson and Jeffrey J. Furniss (collectively, “Claimants”): Jonathan M. Sterling, Esq. and Meagan A. Lamberti, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

For Respondent Lincoln Financial Advisors Corporation (“Respondent”): Kyle B. Osting, Esq., The Lincoln National Life Insurance Company, Fort Wayne, Indiana.

CASE INFORMATION

Statement of Claim filed on or about: June 16, 2020.

Claimants signed the Submission Agreement: June 15, 2020.

Statement of Answer filed on or about: August 13, 2020.

Respondent signed the Submission Agreement: August 13, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants 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 stipulated to Claimants’ expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested expungement of Occurrence Numbers 1489639 and 1489643, compensatory damages in the amount of \$1.00, and such other and further relief as the Arbitrator deems just and proper.

In the Statement of Answer, Respondent requested that Claimants' requests for expungement be granted.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 22, 2020, Claimants advised that the customer in Occurrence Numbers 1489639 and 1489643 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On January 14, 2021, Claimants advised that the Customer was served with notice of the date and time of the rescheduled expungement hearing.

The Arbitrator conducted a recorded, virtual hearing by Zoom video conference on February 12, 2021, so the parties could present oral argument and evidence on Claimants' requests for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, stipulated to the requests for expungement.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer had notice of the expungement requests and hearing.

The Arbitrator reviewed Claimants' BrokerCheck® Reports. 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 also reviewed the settlement documentation, 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 a condition of the settlement was that the Customer would not oppose any request for expungement of all references to the Customer's dispute from CRD. The Arbitrator further noted that Rule 2081 prohibits such conditional settlements; however, the settlement was dated July 19, 2010, prior to the effective date of Rule 2081 on July 30, 2014. The Arbitrator also noted that Claimants did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimants' testimony; the Customer's profile; the Settlement Agreement; the Customer's complaint letter to Respondent dated November 25, 2009 ("Complaint Letter"), and Claimants' Exhibits 10-14.

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. Claimants' claim for \$1.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number 1489643 from registration records maintained by the CRD for Claimant Chadwick Kingsley Watson (CRD Number 2183286) and Occurrence Number 1489639 from registration records maintained by the CRD for Claimant Jeffrey John Furniss (CRD Number 4888498) with the understanding that, pursuant to Notice to Members 04-16, Claimants Chadwick Kingsley Watson and Jeffrey John Furniss 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 testimony in this case revealed that the Customer's husband began discussing estate planning issues with Claimants in January of 2007. Claimants, the Customer, and her husband developed an investment plan for both income and growth. They did so in conjunction with an estate planning attorney hired by the Customer's husband. The presumption was that the Customer would continue to work and have income. The investment plan accounted for additional investment income for approximately ten years. It also accounted for funding the education of the Customer's college-age children and provided for balanced growth. The seed of all of these investments was significant.

Her husband passed away two months later and the Customer continued her professional relationship with Claimants. Sometime later, the Customer decided that she no longer wanted to live in the home that was part of the estate plan, but instead wanted to buy a villa on a golf course. There was concern whether that would circumvent the plan that was developed for continuity of income. However, the Customer ultimately purchased the villa. Subsequently, the Customer suffered a work-related disability and could no longer perform the work she was accustomed to doing.

The Complaint Letter highlighted, essentially, two issues. One issue was a generalized complaint that Claimants did not understand her investor profile and her current and future needs. Second, she raised an issue of the lack of liquidity of certain investments, like real estate investment trusts (REITs) and annuities. According to the testimony of Claimants,

while annuities are critiqued for their high cost, they are generally used to provide a stable and sustained income. Claimants testified that it was not unsuitable to recommend an annuity on a ten year investment to someone of the Customer's age with a long history in financial and estate planning. In addition, the applications and the investment profile signed by the Customer clearly acknowledged that her investment horizon was five to ten years and that she had a background in finance, including both growth and income funds. Her investment profile matched the investments that were recommended to her by Claimants.

Essentially, under the Settlement Agreement, Respondent purchased back the REITs so that the Customer would receive a cash redemption. Upon questioning of Respondent's counsel, it was determined that the post-2008 real estate volatility did cause a decrease in the share price of those REITs. However, according to Claimants' testimony and a proffer by Respondent's counsel, those REITs had sufficiently recovered so that, absent a redemption, the REITs would have fulfilled the purpose of the financial plan that was developed by not only Claimants but also by the Customer and her estate planning attorney. The Customer and Respondent negotiated the Settlement Agreement without the participation of Claimant. A review of the Settlement Agreement suggests no additional monies were paid to correct any allegation of wrongdoing.

Based on a careful review of the Complaint Letter, in contrast to the response by Respondent, as well as the Claimants' testimony, I find that the Customer's allegations were factually impossible and clearly erroneous. Additionally, based on the testimony and the evidence in this matter, I find that Claimants were not engaged in any related sales practice violation because the investments were suitable. It was also clear that the claim made by the Customer was simply false, because it was not consistent with the history of the investment relationship.

3. 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
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee	= \$	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 @ \$50.00/session		= \$	50.00
Pre-Hearing Conference: October 7, 2020	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: February 12, 2021	1 session		
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Total Hearing Session Fees		= \$	100.00

The Arbitrator has assessed the total hearing session fees to Claimants, jointly and severally.

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

ARBITRATOR

Thomas J. Dolina - 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

Thomas J. Dolina

Thomas J. Dolina
Sole Public Arbitrator

03/01/2021

Signature Date

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March 01, 2021

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