

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Ray Anthony San Pedro

Case Number: 20-01902

vs.

Respondent
Eastbrook Capital Group

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. Member

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Ray Anthony San Pedro: Craig A. Riha, Esq., Carmel, Milazzo, and Feil, LLP, Bohemia, New York.

Respondent Eastbrook Capital Group did not appear.

CASE INFORMATION

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

Ray Anthony San Pedro signed the Submission Agreement: June 3, 2020.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1382690 and compensatory damages in the amount of \$1.00 from Respondent.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES

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

Respondent did not file a Statement of Answer or a properly executed Submission Agreement, but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”).

During a conference call conducted by the Arbitrator on October 12, 2020, the Custodian of Records for Respondent appeared and acknowledged that he is aware of the proceedings, does not intend to participate and will not object to expungement. The Arbitrator requested for the Custodian to provide the name of Respondent’s prior owner and/or manager so that Claimant could attempt service upon them, which the Custodian provided. The Arbitrator determined to adjourn the call until Claimant’s new efforts at service were communicated to the Arbitrator so that he could determine whether service upon Respondent was sufficient to proceed.

On February 26, 2021, Claimant filed with FINRA Dispute Resolution Services an Affirmation of Service upon the former owner of Respondent, which the Arbitrator deemed sufficient service. The Arbitrator determined that Respondent is, therefore, bound by his ruling and determination.

On May 7, 2021, Claimant filed a Declaration of Impossibility of Service upon the underlying customer (“Customer”) in Occurrence Number 1382690, together with a copy of the Customer’s obituary. The Arbitrator excused service on the deceased Customer because the matter was not settled, the Customer did not file a demand for arbitration, and the Customer admitted to the compliance department that the allegation was false.

The Arbitrator conducted a recorded, telephonic hearing on November 5, 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 Arbitrator noted that the dispute related to Occurrence Number 1382690 was not settled and, therefore, there was no settlement document to review.

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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s Statement of Claim and Submission Agreement, Claimant’s BrokerCheck® Report, a redacted portion of Claimant’s Form U5, Claimant’s counsel’s Declaration of Impossibility of Service (Customer deceased), and Claimant’s counsel’s Affidavit of Service upon Respondent’s former owner.

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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1382690 from registration records maintained by the CRD for Claimant Ray Anthony San Pedro (CRD Number 4565686) with the understanding that, pursuant to Notice to Members 04-16, Claimant Ray Anthony San Pedro 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, 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:

FINRA Rule 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the CRD) sets forth grounds upon which an arbitration panel may recommend expungement of information from the CRD arising from disputes with customers. Among those grounds is a finding that the claim, allegation or information is false.

Here, Claimant's uncontradicted testimony established that the Customer placed an order for the purchase of shares of publicly traded corporate stock. The shares were purchased pursuant to the Customer's instructions. The Customer failed to pay the purchase price of the shares, and his position was liquidated. The customer filed a complaint alleging that the trade was unauthorized but, when questioned by Respondent's compliance officer, the customer admitted that he placed the purchase order but was unable to pay the purchase price. This account by Claimant was corroborated by the comment entered by Respondent on Claimant's CRD, stating that "On 12/3/07 (customer) was spoken to by the compliance department and (customer) admitted to placing the order but did not have the funds to pay for the trade." CRD further reflects that the matter was closed without settlement and with no action taken. Accordingly, based on the evidence adduced at the hearing, the Customer's claim is false.

Respondent's registration was terminated in 2009, and FINRA was unable to effectuate service. Respondent's former owner was served by Claimant's counsel on February 25, 2021. The Customer died on June 4, 2016 without having filed an arbitration claim. Nevertheless, the passage of time here did not effectively deprive either Respondent or the Customer of an opportunity to be heard. The comment that Respondent entered on Claimant's CRD reflects the result of Respondent's investigation into the Customer's allegation, and the Customer's admission that the allegation was false.

Proposed rule changes would shorten the statute of limitations and render this request for expungement untimely. However, those proposed rule changes are not in effect and, for the reasons set forth above, should not be applied here.

Accordingly, the Arbitrator recommends expungement of all references to Occurrence Number 4565686 from Claimant's CRD records.

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

Late Pre-Hearing Cancellation Fees

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

November 12, 2020, cancellation requested by Claimant WAIVED

December 1, 2020, cancellation requested by Claimant = \$ 100.00

Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed the total late pre-hearing cancellation fees to Claimant.

Postponement Fees

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

July 8, 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:

July 8, 2021, cancellation requested by Claimant WAIVED

The Arbitrator has waived the total last-minute cancellation fees.

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$ 100.00
Pre-Hearing Conferences: October 12, 2020	1 session
February 5, 2021	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing: November 5, 2021	1 session

Total Hearing Session Fees	= \$ 150.00
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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

Steven Gary Leventhal

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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

Steven Gary Leventhal

Steven Gary Leventhal
Sole Public Arbitrator

11/11/2021

Signature Date

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November 12, 2021

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