

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Paul Michael Cooney

Case Number: 20-01944

vs.

Respondents
Maxim Group LLC
Hapoalim Securities USA, Inc.

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. Members

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Paul Michael Cooney: Irwin Wetz, Esq., Wetz Kakos Gerbi Wolinetz Volynsky LLP, Mineola, New York.

For Respondent Maxim Group LLC: Ian H. Hummel, Esq., Maxim Group LLC, New York, New York.

Hapoalim Securities USA, Inc. did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: June 18, 2020.

Paul Michael Cooney signed the Submission Agreement: June 18, 2020.

Statement of Answer filed by Respondent Maxim Group LLC on or about: August 11, 2020.

Maxim Group LLC signed the Submission Agreement: August 11, 2020.

Hapoalim Securities USA, Inc. 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”).

In the Statement of Answer, Respondent Maxim Group LLC did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1098898, 1300092, 1304882, 1308815, 1480322, and 1730086; and compensatory damages in the amount of \$1.00 from Respondents.

In the Statement of Answer, Respondent Maxim Group LLC opposed Claimant’s request for compensatory damages.

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

On March 3, 2021, Claimant withdrew the expungement request for Occurrence Number 1480322, without prejudice.

On March 10, 2021, Claimant withdrew the expungement request for Occurrence Numbers 1300092 and 1304882, without prejudice.

Pursuant to FINRA Arbitration Rules 12702(b)(1) and 13702(b), the Arbitrator grants Claimant’s requests to withdraw Claimant’s requests for expungement of Occurrence Numbers 1300092, 1304882, and 1480322, without prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Hapoalim Securities USA, Inc. did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

On February 11, 2021, Claimant advised that the customers in Occurrence Number 1098898, 1308815, and 1730086 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on March 5, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent Maxim Group LLC did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

Respondent Hapoalim Securities USA, Inc. did not participate in the expungement hearing.

The customers also did not participate in the expungement hearing. The Arbitrator found that the customers had notice of the expungement requests 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 occurrences in the CRD.

The Arbitrator reviewed the settlement documentation related to Occurrence Numbers 1308815 and 1730086, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request. The Arbitrator noted that Claimant contributed to the settlement amount in Occurrence Numbers 1308815 and 1730086. The Arbitrator found that expungement is still appropriate for the reasons stated in the Award section.

The Arbitrator noted that the dispute related to Occurrence Number 1098898 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; exhibits; Claimant's BrokerCheck® Report; and Claimant's testimony.

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 1098898 from registration records maintained by the CRD for Claimant Paul Michael Cooney (CRD Number 2198167) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Michael Cooney 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 factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant testified that the order in question was placed by the customer's brother who did not have trading authority on the customer's account and that, therefore, Claimant could not execute the trade and that he had informed the brother that he could not execute the trade.

The Arbitrator finds Claimant's testimony credible. Based on such testimony, the Arbitrator finds the customer's complaint that there was a failure to sell securities as requested by the customer to be clearly erroneous. Therefore, the Arbitrator recommends expungement of this complaint.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1308815 from registration records maintained by the CRD for Claimant Paul Michael Cooney (CRD Number 2198167) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Michael Cooney 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 factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant testified that the customer was a speculative investor who transacted in small and mid-cap stocks, IPOs, and secondaries. Claimant testified that the customer alleged that he had committed unauthorized trading. Claimant denied this allegation and testified that he had spoken with the customer all the time, including a conversation with the customer about the allegation of unauthorized trading by Claimant. Claimant testified that the customer had stated to him "you didn't do that," that he did not mean to say that, and that he did not write that. Claimant testified that the customer had told him that his accountant told him that he could get money back on his losses through filing a claim.

Claimant testified that the complaint was not true and that he never signed the settlement agreement. Claimant testified that he paid the settlement amount of \$20,000, but that he did not have input into the decision. Claimant testified that counsel for the firm had told him that it was not worth litigating, that it was more of a nuisance, and that he, the firm's counsel, would take care of it.

The Arbitrator finds Claimant's testimony credible. Based on such testimony, the Arbitrator finds the allegation that Claimant had engaged in unauthorized trading to be clearly erroneous. Therefore, the Arbitrator recommends expungement of this complaint.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1730086 from registration records maintained by the CRD for Claimant Paul Michael Cooney (CRD Number 2198167) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Michael Cooney 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 factually impossible or clearly erroneous.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Claimant testified that he inherited this account from a broker who had left Maxim Group LLC ("Maxim"). Claimant testified that the customer had been with Maxim for about 10 years. Claimant testified that the customer had a dental practice with about 15 dentists. Claimant testified that the customer invested in private placements, legacy small-cap stocks, structured notes, SPACS, SPAC warrants, and IPOs, starting with Claimant around June of 2008. Claimant testified that the customer wanted to speculate, and that he wanted to know all the deals that Claimant and his firm were working on. Claimant testified that he sent the customer a prospectus on all the deals he was working on.

Claimant testified that the customer had a net worth of approximately \$3.5 million and an income of about \$300,000. There are three letters from Maxim to the customer which set forth information about the customer and requested that the customer correct any information which needs to be changed. The first letter, dated March 19, 2009, indicated an "Account Annual Income" of \$150,000 - \$249,000; an "Account Net Worth" (excluding primary residence) of "\$24,999"; and "Investment Objectives" of "Capital Appreciation, Speculation/Short-Term Trading, Preservation of Capital." A second letter dated March 17, 2010 that showed an "Account Annual Income" of \$250,000 - \$499,999; an "Account Net Worth" (excluding primary residence) of \$1,000,000 - \$2,499,999; and "Investment Objectives" of "Income, Capital Appreciation, Speculation/Short-Term Trading." A third letter dated July 25, 2012 that showed an "Account Annual Income" of \$250,000 - \$300,000 and "Account Net Worth" (excluding primary residence) of \$3,500,000 - \$4,000,000.

Claimant testified that he believed the customer had more money than what was listed and that he had real estate.

Claimant testified that he spoke with the customer weekly and the customer always wanted to know what deals Claimant and his firm were working on. Claimant testified that the customer had received every statement and confirmation. Claimant testified that the customer's account was always consistent. Claimant testified that the firm would send the customer activity letters to make sure he was aware of the activities in the account; the letters asked that the customer let them know if anything was not correct. Claimant testified that the customer never complained that an activity was not authorized.

Claimant testified that he met with the customer about four times and had a good relationship with him. Claimant testified that he communicated with the customer on a weekly basis. Claimant testified that he spoke with the customer after hours, mostly at

night. Claimant testified that he provided private placement documents to the customer, and that he was an accredited investor qualified to invest in private placements.

Claimant testified that the customer lost money in the period 2011-2012. Claimant said he spoke with the customer in mid to late 2013 and in 2014; the customer expressed an interest in investing less in small cap stocks, and he complained about some prior investments and those complaints were performance-based about the investments. Claimant testified that the customer never complained about him to management.

Claimant testified that he believed the last thing that the customer had signed was a document which showed a date of May 29, 2013 next to the customer's signature, for "Liquidity Needs" the word "Medium" circled with a check mark next to "Medium," and for "Risk Tolerance" the word "Medium" circled with a check mark next to "Medium." Claimant did not know who placed the circles on the document.

Claimant testified that in late 2013 and in 2014, the customer started saying he didn't want to take the risk he previously had taken. The customer added "Capital Appreciation" as an investment objective in January 2014. (See customer's statement dated January 1, 2014 to January 31, 2014, included in Exhibit 2.) Claimant testified that the customer transferred his account out in 2014 and the customer never really talked to Claimant about that transfer.

Claimant testified he was surprised when the customer filed the complaint. Claimant disputed the allegations in the Statement of Claim in the arbitration filed by the customer. The arbitration filed by the customer was settled. Claimant testified that he was not a big part of the settlement process. Claimant testified that the firm pressured him to agree to the settlement. Claimant said that there was a litigation risk and contributed \$100,000 to the settlement amount of \$142,500. Claimant testified that he settled, even though he did not want to, because of litigation risk, attorneys' fees, and a belief that the arbitrators would award the customer something between zero and \$500,000. He stated that the customer's complaint was false. Claimant testified that he did not put in a response to the customer's complaint on his BrokerCheck® Report.

The Arbitrator finds Claimant's testimony credible and based on the testimony and various letters and account statements, the Arbitrator finds that the customer was a high net-worth investor who wanted to do speculative investments with Claimant. The Arbitrator finds that the customer was aware of these investments and their risks. The Arbitrator finds that the investments which Claimant recommended for the customer were not unsuitable. The Arbitrator also finds that the allegation that "the RR breached his fiduciary duty to the client" is clearly erroneous. Accordingly, the Arbitrator finds the customer's complaint is clearly erroneous and, therefore, recommends that it be expunged.

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 person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Maxim Group LLC and Hapoalim Securities USA, Inc. are each assessed the following:

Member Surcharge	=\$	150.00
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Late Pre-Hearing Cancellation Fees

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

November 20, 2020, cancellation requested by Claimant	=\$	100.00
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Total Late Pre-Hearing Cancellation Fees	=\$	100.00
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The Arbitrator has assessed the total late pre-hearing cancellation fees to Claimant.

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 20, 2020	1 session	

Two (2) hearing sessions on expungement request @ \$50.00/session	=\$	100.00
Hearing: March 5, 2021	2 sessions	

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

Ted M. Rosen

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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

Ted M. Rosen

Ted M. Rosen
Sole Public Arbitrator

04/05/2021

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.

April 05, 2021

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