

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Paul Francis Barry

Case Number: 20-01980

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

Hearing Site: Manchester, New
Hampshire

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 Paul Francis Barry: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Sarah K. Yates, Esq. and Joel Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: June 23, 2020.

Paul Francis Barry signed the Submission Agreement: June 23, 2020.

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

Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: August 14, 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 233083; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

At the close 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 22, 2020, Claimant advised that the customer in Occurrence Number 233083 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 13, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

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

The customer did not participate in the expungement hearing. The Arbitrator found that 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 did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, exhibits, post-hearing submissions, 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:

The Arbitrator recommends the expungement of all references to Occurrence Number 233083 from registration records maintained by the CRD for Claimant Paul Francis Barry

(CRD Number 2199987) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Francis Barry 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; and
The claim, allegation, or information is false.

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

Although the customer alleged that Claimant recommended purchase of an unsuitable stock (CENL) and made misrepresentations with regard thereto, the evidence demonstrates that this allegation was false, factually impossible, and clearly erroneous. In fact, it was the customer who raised the prospect of purchasing the CENL stock. Claimant recommended against the purchase as unsuitable for the customer's profile, characterizing the stock as short term and speculative. Further, Claimant told the customer that Respondent did not follow that stock and that he, therefore, did not have sufficient information about it to recommend its purchase. After the customer insisted on purchasing the stock and the stock rose in value, Claimant, on several occasions, advised the customer to sell the stock and lock in the gains; and the customer ignored this advice.

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 firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated is assessed the following:

Member Surcharge	= \$	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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-hearing Conference: October 21, 2020	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: January 13, 2021	1 session	
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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

Robert J. Ambrogi

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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

Robert J. Ambrogi

Robert J. Ambrogi
Sole Public Arbitrator

01/25/2021

Signature Date

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January 25, 2021

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