

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Andrew Michael Lerner

Case Number: 20-01981

vs.

Respondent
Oppenheimer & Co., Inc.

Hearing Site: Boca Raton, Florida

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 Andrew Michael Lerner: Cory S. Zadanosky, Esq., Zadanosky & Associates, P.A., Boca Raton, Florida.

For Respondent Oppenheimer & Co., Inc.: Justin D. Dickinson, Esq., Oppenheimer & Co., Inc., New York, New York.

CASE INFORMATION

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

Andrew Michael Lerner signed the Submission Agreement: June 23, 2020.

Statement of Answer filed by Respondent on or about: August 12, 2020.

Oppenheimer & Co., Inc. signed the Submission Agreement: August 12, 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 did not oppose Claimant’s expungement request, but denied each and every allegation in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all references to Occurrence Number 1978172 from his CRD records; compensatory damages in the amount of \$1.00; and such other and further relief as Claimant may have been entitled to in law or in equity or may have been otherwise just and proper under the circumstances.

In the Statement of Answer, Respondent opposed any monetary damages demand either explicitly or implicitly stated in the Statement of Claim.

At 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 February 2, 2021, Claimant advised that the customers in Occurrence Number 1978172 (“Customers”) were 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 March 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 Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers 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 noted that the dispute related to Occurrence Number 1978172 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: all the documents submitted by the parties, as well as the 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 1978172 from registration records maintained by the CRD for Claimant Andrew Michael Lerner (CRD Number 6212719) with the understanding that, pursuant to Notice to Members 04-16, Claimant Andrew Michael Lerner 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 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:

The Customers were sophisticated and knowledgeable investors. Two years after purchasing a municipal bond, the Customers claimed that Claimant had failed to advise the Customers that the issuer of the bond operated a coal-fired facility. The documentation submitted clearly showed that the facility was coal-fired, because the proceeds of the bond were earmarked for removal of smokestack contaminants. In addition, the Customers initiated the complaint by letter to Respondent. This letter was reviewed and rejected by the Respondent, and then the Customers never filed for arbitration with FINRA. Claimant submitted documentary evidence that the Customers had previously purchased similar bonds from a former broker with Respondent, and the Customers were fully aware of what they were buying. The Arbitrator found Claimant to be forthright and believable in his testimony and responded clearly to the Arbitrator’s questions. Therefore, the Arbitrator recommends expungement of this this matter from Claimant’s CRD record on the ground that the claim is factually impossible or clearly erroneous.

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
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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 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 19, 2020	1 session	

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

Total Hearing Session Fees	= \$	100.00
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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

Carl Shechter

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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

Carl Shechter

Carl Shechter
Sole Public Arbitrator

03/12/2021

Signature Date

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March 12, 2021

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