

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David Bryan Schachter

Case Number: 20-02007

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Los Angeles, California

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 David Bryan Schachter (“Claimant”): Tosh Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Patrick Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: June 24, 2020.
Claimant signed the Submission Agreement: June 24, 2020.

Statement of Answer filed by Respondent on or about: September 8, 2020.
Respondent signed the Submission Agreement: September 8, 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1097474 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false; and
2. 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 hearing, Claimant requested expungement of Occurrence Number 1097474 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(A), in addition to FINRA Rule 2080(b)(1)(C). Claimant also withdrew his 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 May 11, 2021, Claimant advised that the customer in Occurrence Number 1097474 ("Customer") 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 May 11, 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 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 noted that the dispute related to Occurrence Number 1097474 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: Statement of Claim; Claimant's exhibits; Claimant's testimony; and Claimant's BrokerCheck® Report.

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 1097474 from registration records maintained by the CRD for Claimant David Bryan

Schachter (CRD Number 2278586) with the understanding that, pursuant to Notice to Members 04-16, Claimant David Bryan Schachter 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 false.

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

The Customer’s allegation that Claimant purchased unspecified speculative securities in its offshore corporate account is false because:

1. The Customer had a non-discretionary account with Respondent and thus, had to approve, and did approve, every investment in its portfolio. The Customer specifically directed and authorized each transaction made in its account. The Customer received a trade confirmation after each transaction in its account, as well as monthly and annual account statements from Respondent that detailed all activity in the account.
2. Only after Claimant and the Customer thoroughly reviewed the investment profile and the risks associated with such investment, did the Customer agree to invest some of the portfolio’s funds into an offshore Merrill Lynch mutual fund recommended by Claimant.
3. At the time of the Customer’s complaint, Claimant was no longer handling the account as it had been transferred to another broker. Claimant had no insight into the activity in the account or knowledge of what directly caused the complaint.

Claimant performed his duties as a representative in an ethical and professional manner.

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(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

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: December 7, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 11, 2021 1 session

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

Erik R. Siering

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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

Erik R. Siering

Erik R. Siering
Sole Public Arbitrator

06/04/2021

Signature Date

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June 04, 2021

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