

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Darin Matthew Ely

Case Number: 20-02022

vs.

Respondents

Infinex Investments, Inc.
BI Investments, LLC

Hearing Site: Norfolk, Virginia

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

REPRESENTATION OF PARTIES

For Claimant Darin Matthew Ely: Dochter Kennedy, MBA, J.D., and Michael O’Gara, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondents Infinex Investments, Inc., and BI Investments, LLC: Gregg J. Breitbart, Esq., Kaufman Dolowich & Voluck LLP, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: June 26, 2020.

Darin Matthew Ely signed the Submission Agreement: June 26, 2020.

Joint Statement of Answer filed by Respondents on or about: August 4, 2020.

Infinex Investments, Inc. signed the Submission Agreement: August 4, 2020.

BI Investments, LLC signed the Submission Agreement: August 4, 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 Respondents’ Answer and Defenses, Respondents had no opposition to Claimant’s request for the Panel issuing an award for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1457613 pursuant to FINRA Rule 2080(b)(1)(A) and 2080(b)(1)(C); deletion of all Disclosure Reporting Pages corresponding with the Occurrence Number 1457613; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In Respondents' Answer and Defenses, Respondents opposed Claimant's request for \$1.00 damages and denied any liability to Claimant.

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 November 6, 2020, Claimant advised that the customer in Occurrence Number 1457613 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 March 30, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents 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 noted that the dispute related to Occurrence Number 1457613 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 1457613 from registration records maintained by the CRD for Claimant Darin Matthew Ely (CRD Number 2767198) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Darin Matthew Ely 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:

The customer alleged that "the sale of reverse convertible securities was unsuitable." The customer informed Claimant of his complaint and requested \$59,000.00 in damages, which he denied. Claimant informed Respondent Infinex Investments, Inc., who investigated the matter, then wrote a letter to the customer denying the complaint and explaining the reasons. The customer never pursued the matter. Claimant testified that he met with the customer and performed due diligence in obtaining his investment goals, investment experience, investment risk tolerance, and investment time frame. Based on the customer's goal of receiving a return on the investment of over 12% yield, long-term investment experience, and high net-worth, Claimant testified that the customer stated a moderate investment risk, investment of up to 3% of the customer's net worth, and long-term growth goal, so Claimant recommended reverse convertible securities which were suitable. Claimant discussed the pros and cons of the investments and informed the customer that no investment was guaranteed as to performance.

The customer received a prospectus, legal information, market reports, and then reviewed and signed Respondent's New Account Form and Certificate of Receipt & Disclosure for the bonds purchase. For a while, the securities performed well and made money. The customer had no complaint. Then, the market crashed in 2008 and all the investments took a downturn. The customer met with Claimant and demanded \$59,000.00 in damages for the alleged loss. (Claimant was not sure how this amount was determined. The original amount invested was \$50,000, and the customer did not seem to calculate the return on the investment before the crash, the increase in the interest rate, or the amount of return from the sale of the investment.) Claimant explained how the investment was suitable and the customer said he would file a complaint.

The Arbitrator finds the customer's version of the events not credible and not supported by the evidence, and therefore, factually impossible, and false. While the customer was unhappy with the loss, there was no wrongdoing on the part of Claimant. Therefore, the Arbitrator concludes that Claimant be granted expungement of the customer dispute in this occurrence.

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 |
|--------------------------|-----|-------|

**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 parties, Respondents Infinex Investments, Inc. and BI Investments, LLC are each assessed the following:

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|------------------|-----|--------|
| 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:

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| One (1) pre-hearing session with a single Arbitrator @ \$50.00/session | =\$ | 50.00 |
| Pre-Hearing Conference: November 4, 2020 | 1 session | |

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| One (1) hearing session on expungement request @ \$50.00/session | =\$ | 50.00 |
| Hearing: March 30, 2021 | 1 session | |

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| 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

Michael J. Ahlstrom

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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

Michael J. Ahlstrom

Michael J. Ahlstrom
Sole Public Arbitrator

04/05/2021

Signature Date

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April 05, 2021

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