

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Daryl Scott Hersch  
Jeffrey Peter Gordon

Case Number: 20-02040

vs.

Respondent

Celadon Financial Group LLC

Hearing Site: Jersey City, New Jersey

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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 Persons vs. Member

**REPRESENTATION OF PARTIES**

For Claimants Daryl Scott Hersch and Jeffrey Peter Gordon: Ronald Shindler, Esq., Fowler White Burnett, P.A., Ft. Lauderdale, Florida.

For Respondent Celadon Financial Group LLC: Paul M. Waldman, Esq., Celadon Financial Group LLC, Chatham, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: June 27, 2020.

Amended Statement of Claim filed on or about: November 9, 2020.

Daryl Scott Hersch signed the Submission Agreement: June 27, 2020.

Jeffrey Peter Gordon signed the Submission Agreement: June 27, 2020.

Statement of Answer filed by Respondent on or about: August 28, 2020.

Celadon Financial Group LLC signed the Submission Agreement: March 2, 2021.

**CASE SUMMARY**

In the Statement of Claim and Amended Statement of Claim, Claimants 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 Claimants’ expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim and Amended Statement of Claim, Claimants requested expungement of Occurrence Numbers 1938562 and 1889006; compensatory damages in the amount of \$10.00 from Respondent; and awarding such other and further relief as deemed appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On January 27, 2021, Claimants advised that the customer in Occurrence Numbers 1938562 and 1889006 was served with the Amended Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on February 17, 2021, so the parties could present oral argument and evidence on Claimants' 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's counsel participated in the expungement hearing and opposed the expungement request related to Occurrence Numbers 1938562 and 1889006.

The Arbitrator reviewed Claimants' BrokerCheck® Reports. 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 also reviewed the settlement documentation related to Occurrence Numbers 1938562 and 1889006, 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 Claimants did not contribute to the settlement amount.

In recommending expungement of Occurrence Number 1938562, the Arbitrator relied upon the following documentary or other evidence: the pleadings; exhibits; Claimants' BrokerCheck® Reports; Claimants' testimonies; testimony of Respondent's counsel as a fact witness; and submissions, statements, and representations made by counsel for the customer in Occurrence Numbers 1938562 and 1889006.

### **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. Claimants' request for \$10.00 in compensatory damages is denied.

2. Claimant Jeffrey Peter Gordon's request for expungement of Occurrence Number 1889006 from his registration records maintained by the CRD is denied.
3. The Arbitrator recommends the expungement of all references to Occurrence Number 1938562 from registration records maintained by the CRD for Claimant Daryl Scott Hersch (CRD Number 1255474) with the understanding that, pursuant to Notice to Members 04-16, Claimant Daryl Scott Hersch 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 false.

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

The customer's complaint relates to a series of transactions arising from the short sale of bonds in the customer's account. As a result of that transaction, the customer allegedly lost approximately \$87,000 from subsequent buy-in trades and margin calls necessitated to meet obligations created by the short sale.

The customer claimed that the initial short trade was not authorized and that the customer's representative did not give Jeffrey Peter Gordon ("Gordon"), on behalf of Celadon Financial Group LLC ("Celadon"), a firm offer. Celadon settled the arbitration for \$30,000 through mediation, prior to the evidentiary hearing. Neither Daryl Scott Hersch ("Hersch") nor Gordon contributed to the settlement. The issue of expungement, while pled in the Statement of Answer ("Answer") filed in connection with the underlying arbitration, was not presented to the arbitration panel for consideration or disposition as a result of the settlement (i.e., no evidentiary hearing was conducted on the merits of any issue raised in the Statement of Claim or Answer) and, therefore, the present application constituted the first such application for both Hersch and Gordon that is being reviewed on its merits. There was no provision in the settlement agreement from the underlying arbitration that prohibited or limited the customer from testifying about Hersch or Gordon or the settlement. The Statement of Claim in the arbitration case was properly reported on Hersch's CRD and Gordon's CRD by Celadon. Celadon affirmatively supported both applications for expungement.

Fundamentally, unauthorized transactions are trades made for a customer without the customer's permission or authorization. There is evidence that the customer complained about the initial transaction (i.e., the short sale) shortly after it was executed. Without the customer's testimony, the representations made by the customer's counsel (both verbally and as set forth in the customer's brief) were considered. There is also evidence from both prior to the initial transaction and afterwards that suggest that the customer did authorize the transaction. Gordon and Hersch both explained how the transaction was effectuated in conformance with industry practice and their own extensive experience in

the industry. The fact that the customer did not immediately mitigate damages further buttresses the position that the customer may have intended for the initial trade to be effectuated or may have ratified the transaction.

Gordon did not make a misrepresentation or fail to disclose a material fact to the customer. At most, Gordon reasonably misunderstood his authority or the terms of the customer's order. There is no evidence whatsoever, including the representations made by the customer and counsel, that support a claim that Gordon acted in bad faith, with intent to deceive, defraud or injure the customer, or with a willful and reckless disregard of the customer's best interests, sometimes referred to as "scienter." Similarly, there is no evidence whatsoever that the transactions at issue were made in furtherance of or in connection with a scheme to engage in any type of improper conduct, such as conversion, improper use of funds, churning, etc. Without further evidence, it cannot be determined that Gordon is entitled to expungement of Occurrence Number 1889006.

Hersch did not engage in unauthorized trading. The sale of securities following the initial transaction was done to cover the short position and was directed by the clearing broker. The customer's decision not to mitigate damages reflects an active decision by the customer either to ratify or otherwise readjust its strategy after the short sale was executed. Hersch did not personally effectuate unauthorized trades or act in contravention of the customer's directives. As with Gordon, there is no evidence whatsoever, including the representations made by the customer's counsel, that support a claim that Hersch acted in bad faith, with intent to deceive, defraud or injure the customer, or a willful and reckless disregard of the customer's best interests (i.e., scienter).

Expungement is an extraordinary remedy. The Arbitrator finds that expungement of the customer dispute information with respect to Occurrence Number 1938562, as contained on Hersch's CRD, will not have a material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements. Accordingly, the Arbitrator concludes that the allegations against Hersch were false.

The Arbitrator does not make any conclusions regarding the validity of the customer's allegations concerning Gordon's being at fault for the customer's alleged losses. Moreover, insofar as the customer posited certain arguments regarding the customer's concerns with the allegations raised by Hersch and Gordon in this expungement proceeding, the Arbitrator emphasizes that nothing in the award is intended to state, suggest, or otherwise infer any impropriety by the customer or the customer's counsel in connection with the transactions that gave rise to the underlying arbitration or the Statement of Claim that was filed in that action.

4. 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 persons at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Celadon Financial Group LLC 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 28, 2020	1 session	

Two (2) hearing sessions on expungement request @ \$50.00/session	=\$	100.00
Hearing: February 17, 2021	2 sessions	

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Total Hearing Session Fees	=\$	150.00
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The Arbitrator has assessed the total hearing session fees joint and severally to Claimants.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATOR**

Louis H. Miron

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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**

***Louis H Miron***

Louis H. Miron  
Sole Public Arbitrator

**03/05/2021**

Signature Date

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March 05, 2021

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