

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

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In the Matter of the Arbitration Between:

Claimant  
Thomas McWilliams

Case Number: 20-02042

vs.

Respondent  
PFS Investments Inc.

Hearing Site: Manchester, New  
Hampshire

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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 Person vs. Member.

The evidentiary hearing was conducted by videoconferencing.

**REPRESENTATION OF PARTIES**

For Claimant Thomas McWilliams: Michael T. Gass, Esq., and Stephano Sharma, Esq., Choate, Hall & Stewart LLP, Boston, Massachusetts.

For Respondent PFS Investments Inc.: Adam M. Weaver, Esq., PFS Investments Inc., Duluth, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: June 28, 2020.

Claimant signed the Submission Agreement: June 26, 2020.

Respondent PFS Investments Inc. did not file a Statement of Answer or sign the Submission Agreement

**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”).

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2047570.

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

The Arbitrators acknowledge having read the pleadings and other materials filed by the parties.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure and is bound by the determination of the Panel on all issues submitted.

On November 6, 2020, Claimant advised that the customer in Occurrence Number 2047570 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

By correspondence dated November 7, 2020, counsel for the customer in Occurrence Number 2047570 advised Claimant that the customer will not participate in the expungement hearing.

By correspondence dated November 17, 2020, Respondent PFS Investments Inc. advised Claimant that it did not oppose Claimant's request for expungement.

The Panel conducted a recorded, virtual hearing on December 16, 2020 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and did not oppose the request for expungement.

The customer also did not participate in the expungement hearing and did not oppose the request for expungement. The Panel found that the customer had notice of the expungement request and hearing.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel noted that the dispute related to Occurrence Number 2047570 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's testimony and the testimony of the investment advisor whose relationship with the customer was the basis for customer complaint.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to Occurrence Number 2047570 from registration records maintained by the CRD for Claimant Thomas McWilliams (CRD Number 1336226) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas McWilliams 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 Panel 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 Panel has made the above Rule 2080 findings based on the following reasons:

The issue giving rise to the complaint was whether or not the Claimant had failed to properly supervise the establishment of the customer's account. The Panel finds that there was no evidence of a failure to supervise. The Panel further finds that errors related to the establishment of the account were clerical errors unrelated to the Claimant's supervision and purview.

### **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 = \$ 1,575.00

*\*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 events giving rise to the dispute. Accordingly, as a party, Respondent PFS Investments Inc. is assessed the following:

Member Surcharge = \$ 1,900.00  
Member Process Fee = \$ 3,750.00

#### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-hearing Conference: November 3, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00  
Hearing Date: December 16, 2020 1 session

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Total Hearing Session Fees = \$ 2, 250.00

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.

**ARBITRATION PANEL**

Jim Geiger	-	Public Arbitrator, Presiding Chairperson
John James McGovern, Jr.	-	Public Arbitrator
Patrick W. McKeon	-	Non-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.

**Concurring Arbitrators' Signatures**

***Jim Geiger***

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Jim Geiger  
Public Arbitrator, Presiding Chairperson

**01/13/2021**

\_\_\_\_\_  
Signature Date

***John James McGovern, Jr.***

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John James McGovern, Jr.  
Public Arbitrator

**01/14/2021**

\_\_\_\_\_  
Signature Date

***Patrick W. McKeon***

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Patrick W. McKeon  
Non-Public Arbitrator

**01/14/2021**

\_\_\_\_\_  
Signature Date

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January 14, 2021

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