

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

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In the Matter of the Arbitration Between:

Claimant  
Francisco B. Almada

Case Number: 20-02062

vs.

Respondent  
Union Capital Co.

Hearing Site: Phoenix, Arizona

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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

**REPRESENTATION OF PARTIES**

For Claimant Francisco B. Almada (“Claimant”): Christopher D. Warren, Esq., Warren Law Group, Jersey City, New Jersey.

For Respondent Union Capital Co. (“Respondent”): Joseph Bodkin, Union Capital Company, Tucson, Arizona.

**CASE INFORMATION**

Statement of Claim filed on or about: June 30, 2020.  
Claimant signed the Submission Agreement: June 5, 2020.

Statement of Answer filed by Respondent on or about: September 3, 2020.  
Respondent did not 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”).

In the Statement of Answer, Respondent did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1563269 from the CRD records pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation, or information is factually impossible or

clearly erroneous;

2. Expungement of Occurrence Number 1563269 from the CRD records pursuant to FINRA Rule 2080(b)(1)(B) as the Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of fund;
3. Expungement of Occurrence Number 1563269 from the CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested Claimant's request for \$1.00 in damages be denied.

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

On November 19, 2020, Claimant advised that the customers in Occurrence Number 1563269 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On that same date, Claimant filed an Affidavit signed by Claimant's counsel advising that the Customers were served with the Statement of Claim and with notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on December 9, 2020 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 also reviewed the settlement documents, 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 Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and Claimant's BrokerCheck® Report.

## AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 1563269 from registration records maintained by the CRD for Claimant Francisco B. Almada (CRD Number 1575694) with the understanding that, pursuant to Notice to Members 04-16, Claimant Francisco B. Almada 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The Arbitrator finds Claimant's version of the underlying events credible. The Arbitrator finds the underlying Customers' allegations and versions of the events are not supported by the evidence, and therefore, factually impossible and false. The underlying claim, filed in 2011, alleged \$168,000.00 in damages. The claim was without any foundation in fact. The Customers utilized the services of Claimant and Respondent and maintained a diversified portfolio of investments. The overall portfolio of investments was successful and Claimant acted at all times in the best interests of his clients. The Customers gave an informed, written approval for a small investment to be placed in pension futures and S & P Index futures through a third-party vendor. That one alternative investment, which constituted approximately 3% of the total portfolio, lost money. The underlying claim was settled for "nuisance" value to avoid costly litigation by Respondent with a total payment of \$19,250.00 to each customer, a small fraction of the actual claim of damages. No money was paid by Claimant. There was no evidence of any breach of fiduciary duty or lack of supervision. All investments made through Claimant were suitable to the Customers and made with their express, informed, and written approval. For these reasons, expungement of Claimant's record is appropriate.

The evidence presented at the expungement hearing led the Arbitrator to believe that Claimant was not involved in the alleged sales practice violation, including breach of fiduciary duty and failure to supervise, that was the subject of the filing of the claim by the Customers. The Arbitrator reviewed the settlement agreement, considered the amounts paid to any party, and considered any other relevant terms and conditions of settlement.

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 20, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing Date: December 9, 2020	1 session	

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Total Hearing Session Fees	=\$	100.00
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The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Howard R. Gaines

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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**

***Howard R. Gaines***

Howard R. Gaines  
Sole Public Arbitrator

**01/13/2021**

Signature Date

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January 13, 2021

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