

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brian Thomas Horn

Case Number: 20-02069

vs.

Respondent
Somerset Securities, Inc.

Hearing Site: Portland, Oregon

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 Brian Thomas Horn (“Claimant”): Harris Freedman, Esq., and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

Respondent Somerset Securities, Inc. (“Respondent”) did not enter an appearance.

CASE INFORMATION

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

Respondent 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 a FINRA Arbitration, Occurrence Number 2019340, (“Underlying Arbitration”) from registration records maintained by the Central Registration Depository (“CRD”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Arbitration from his 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 the Underlying Arbitration from his CRD records pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying the Underlying Arbitration;
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.

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 Statement of Answer or a properly executed Submission Agreement. The Arbitrator determined that Respondent was served with the Claim Notification letter dated July 1, 2020 by regular mail, and the Overdue Notice (including the Statement of Claim) dated August 24, 2020 by regular mail and Federal Express, as evidenced by the tracking information available online. The Arbitrator also determined that Respondent was served with the Notification of Arbitration dated September 21, 2020 by regular mail and Federal Express, as evidenced by the tracking information available online.

The Claim Notification letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent failed to register for the DR Portal.

The Arbitrator determined that Respondent is, therefore, bound by the Arbitrator's ruling and determination.

On October 21, 2020, Claimant filed a copy of a letter sent to the Customer in the Underlying Arbitration, ("Customer") including a copy of the Statement of Claim and notice of the expungement hearing, via FedEx. On October 27, 2020, Claimant filed an Affidavit of Service and FedEx delivery confirmation.

The Arbitrator conducted a recorded, telephonic hearing on December 14, 2020 so the parties could present oral argument and evidence on Claimant's 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 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; the Agreement for Purchase of Structured Asset between the Customer and Respondent; and the Settlement and Release Agreement dated September 25, 2019 between the Customer and his wife and Respondent, Claimant and various other individuals.

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 the Underlying Arbitration, Occurrence Number 2019340 from registration records maintained by the CRD for Claimant Brian Thomas Horn (CRD Number 4143693) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Thomas Horn 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 claim, allegation, or information is false.

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

The evidence at this hearing reflects that contrary to the Customer's allegations in their claim, Claimant did not solicit the investment, did not recommend that the Customer use the majority of his retirement savings to purchase the secondary market annuity in question, did not misrepresent that the product was safe, and never solicited or spoke with the Customer's wife. The evidence reflects that Customer called Respondent, and specifically sought to purchase structured settlement payment rights. Therefore, the Arbitrator finds that the Customer's claim is clearly erroneous, factually impossible and false, and meets the standard for expungement.

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(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: October 16, 2020 1 session

One (1) hearing sessions on expungement request @ \$50.00/session = \$ 50.00
Hearing Dates: December 14, 2020 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

Katherine Hendricks

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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

Katherine Hendricks

Katherine Hendricks
Sole Public Arbitrator

01/08/2021

Signature Date

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January 15, 2021

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