

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

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In the Matter of the Arbitration Between:

Claimant  
Joanne C. Gilrain

Case Number: 20-02078

vs.

Respondents  
RBC Capital Markets LLC  
Brian James Kerwin

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: Customer vs. Associated Person and Member

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

Claimant Joanne C. Gilrain appeared pro se.

For Respondents RBC Capital Markets LLC and Brian James Kerwin (“Kerwin”): Roxanna V. Gonzalez, Esq., Dorsey & Whitney LLP, Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: September 15, 2020.  
Joanne C. Gilrain signed the Submission Agreement: July 1, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, unauthorized trading, and failure to follow instructions. The causes of action relate to various securities.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$5,200.00 and filing fees in the amount of \$425.00.

In the Statement of Answer, Respondents requested that the Arbitrator deny the Statement of Claim in its entirety and expungement of this matter from Respondent Kerwin's CRD records.

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

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

A Statement of Claim filed on July 27, 2020, and a revised Statement of Claim filed on August 26, 2020, were not served on the Respondents or considered by the Arbitrator.

The Arbitrator conducted a recorded hearing by videoconference on March 9, 2021, so the parties could present oral argument and evidence on Respondent Kerwin's request for expungement.

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.

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

### **AWARD**

After considering the pleadings, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2097628) from registration records maintained by the CRD for Respondent Brian James Kerwin (CRD Number 717192) with the understanding that, pursuant to Notice to Members 04-16, Respondent Brian James Kerwin 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:

Respondent Kerwin gave credible testimony. Claimant's accounts that are subject to the complaint were discretionary. Respondent Kerwin's assistant sent Claimant (and all of his managed account customers) research on March 23, 2020 with purchase recommendations. Respondent Kerwin advised Claimant (and his other managed account customers) to "wait to purchase anything until tomorrow" and Claimant agreed to follow Respondent's advice. Respondent Kerwin made a buy recommendation to all of his managed account clients, including Claimant, and planned to wait until March 24, 2020 to buy, when the COVID-19 fiscal package was announced and Claimant agreed to Respondent Kerwin's plan. In her Statement of Claim, Claimant stated that she wanted to buy stock on March 23, 2020 but provided no order to execute a trade. Respondent Kerwin told Claimant that he bought "a little of AMD" on March 23, 2020 for her accounts. When the Arbitrator asked Claimant whether she made a specific order to be executed on March 23, 2020, Claimant testified "no".

There is no mention of a specific order to be executed on March 23, 2020 in any document or communication that Claimant submitted as evidence in this matter. On March 24, 2020, when Claimant became aware that shares were purchased in her account, Claimant asked Respondent Kerwin for a "correction" and called the purchases unauthorized trades. Respondent Kerwin offered to "break" the March 24, 2020 trades but Claimant made it clear that she did not want the trades to be broken. Claimant's accounts experienced no loss due to Respondent Kerwin's March 24, 2020 purchases and Claimant's decision not to break the trades. Claimant's accounts balances increased on March 24, 2020.

3. FINRA Dispute Resolution Services shall retain the \$325.00 filing fee that Claimant deposited previously.
4. Respondent Kerwin is liable for and shall pay to Claimant \$81.25 to reimburse Claimant for 25% of the filing fee previously paid to FINRA Dispute Resolution Services.
5. Respondent RBC Capital Markets LLC is liable for and shall pay to Claimant \$81.25 to reimburse Claimant for 25% of the filing fee previously paid to FINRA Dispute Resolution Services.

### **FEES**

Pursuant to the Code:

Respondent RBC Capital Markets LLC has paid to FINRA Dispute Resolution Services the \$325.00 Member Surcharge previously invoiced.

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) hearing session on expungement request @ \$250.00/session	= \$	250.00
Hearing: March 9, 2021 1 session		
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Total Hearing Session Fees	= \$	250.00

The Panel has assessed the total hearing session fees for the expungement hearing to Respondent Kerwin.

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

**ARBITRATOR**

Denise L. Quarles

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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**

***Denise L. Quarles***

Denise L. Quarles  
Sole Public Arbitrator

**03/26/2021**

Signature Date

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.

March 26, 2021

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