

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Dominick Joseph Diorio, Jr.

Case Number: 20-02081

vs.

Respondent

Aegis Capital Corporation

Hearing Site: New York, New York

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 videoconference.

REPRESENTATION OF PARTIES

For Claimant Dominick Joseph Diorio, Jr.: Irwin Wertz, Esq., Wertz Kakos Gerbi Wolinetz Volynsky LLP, Mineola, New York.

For Respondent Aegis Capital Corporation: Kevin Meade, Aegis Capital Corporation, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 1, 2020.

Dominick Joseph Diorio, Jr. signed the Submission Agreement: July 1, 2020.

Statement of Answer filed by Respondent on or about: December 31, 2020.

Aegis Capital Corporation signed the Submission Agreement: December 14, 2020.

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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 617650, 720942, 1954880, and 1971766; and compensatory damages in the amount of \$1.00 from Respondent.

At the close of 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.

On December 31, 2020, Claimant advised that the customers in Occurrence Numbers 720942, 1954880, and 1971766 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On January 16, 2021, Claimant advised that the customer in Occurrence Number 617650, formerly residing in Australia or the United Kingdom, was not successfully contacted despite sending notifications to individuals with the same name at 46 locations.

The Arbitrator conducted a recorded hearing by videoconference on January 22, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

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 for Occurrence Numbers 1954880 and 1971766, considered the amount of payments made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the disputes related to Occurrence Numbers 617650 and 720942 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, exhibits, proof of service on customers, settlement documents for Occurrence Numbers 1954880 and 1971766, Claimant's BrokerCheck® Report, and Claimant's testimony.

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 Occurrence Number 617650 from registration records maintained by the CRD for Claimant Dominick Joseph Diorio, Jr. (CRD Number 2447817) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominick Joseph Diorio, Jr. 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 finding of fact:

The claim, allegation, or information is false.

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

A complaint was filed on September 3, 1998, by the customer with the brokerage firm, Tasin & Company ("Tasin"), alleging an unauthorized use of margin in his account by Claimant and damages in the amount of \$40,000. Tasin investigated and found no wrongdoing in the customer's account. The customer had agreed to purchase stock on margin and to each trade. The customer abandoned the claim, and the case was closed on September 24, 1998.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 720942 from registration records maintained by the CRD for Claimant Dominick Joseph Diorio, Jr. (CRD Number 2447817) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominick Joseph Diorio, Jr. 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 had asked for 1,000 shares of an IPO stock and received 200 shares. The customer, in fact, had received all of the shares in Claimant's allotment. The customer filed a claim, per se, with the National Association of Securities Dealers, Inc. on June 18, 1996,

seeking \$7,588.75 in compensatory damages. The case was decided by a single arbitrator who denied and dismissed the claim in its entirety on February 29, 2000. Claimant had left Landmark International Equities ("Landmark") before the claim had been filed and was not notified of its existence. It is his belief that Landmark had become defunct before the claim was filed. This is a Legacy Disclosure.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1954880 from registration records maintained by the CRD for Claimant Dominick Joseph Diorio, Jr. (CRD Number 2447817) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominick Joseph Diorio, Jr. 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 FINRA arbitration case that was filed on August 29, 2017 did not name Claimant as a party. The customers originally claimed compensatory damages of \$3,800,000 for an unsuitable investment strategy that was allegedly pursued by Claimant, costing the customers excessive fees, commissions, margin interest, and markup/markdowns. The Statement of Claim was amended on September 29, 2017 to remove the specific amount claimed and to defer that determination to the hearing.

The customers were a wealthy couple in their 70s. The husband was the inventor of a bathroom training device for dogs. He sold the rights of this product and business in 1997 and invested heavily in real estate, buying and flipping properties, and speculated in penny stocks and alternative investments. He is the former President, owner, and consultant for various pet-related entities and sits on the Board of Directors of several companies.

The customers' son introduced them to Claimant, and they opened a joint account at LIS Investments/Aegis Capital Corporation in 2011. They also subsequently opened two individual accounts at Aegis, one in April 2013 for the wife and the other one in December 2013 for the husband. These were non-discretionary accounts. On the customers' joint account and the husband's individual account's opening applications, the customers declared an Annual Income of \$1,000,000+; Liquid and Total Net Worth of \$3,000,000+; Investment Objective of Speculation; Risk Tolerance of Maximum Risk, with a Time Horizon of 12 years or more; and Investment Experience with stocks, bonds, mutual funds, options, margin, active short-term trading and alternative investments. On the wife's individual account application, she declared an Investment Objective of Balanced Growth; Risk Tolerance of Moderate Risk; Investment Time Horizon of 9-11 years; and Investment Experience with stocks only. The customers also signed the Aegis IPO Certification Forms, Active Trading Letters and Concentration Letters, Client Risk Disclosure Forms, Non-Traded

Alternative Investment Suitability Assessment and Disclosure Forms, Unsolicited Trade Letters, Letters of Authorization, and Letters of Indemnification. In addition to their various Aegis Capital Corporation (“Aegis”) accounts, the customers also maintained accounts at Merrill Lynch, Pierce, Fenner & Smith Inc., Charles Schwab Corporation, and other brokerage firms.

The husband traded aggressively on a daily basis, favoring penny stocks and options. He called Claimant several times a day, including when Claimant was hospitalized, and monopolized his time. Aegis has a record of 5,000 telephone calls and 6,000 e-mails between Claimant and the husband over a five-year period.

The husband withdrew \$100,000 on a monthly basis and when his account(s) started generating losses due to his trading activity, Claimant suggested that he invest in some income generating assets such as the Real Estate Investment Trust whose dividends would replenish the cash that the husband was withdrawing. The husband agreed with Claimant’s suggestion and adopted this strategy.

At no time did the customers express any dissatisfaction with the performance of their Aegis accounts or with Claimant’s service.

Without consulting Claimant, Aegis elected to settle the claim, which it did on May 23, 2018 for 22% of the amount originally asked. Claimant did not contribute to the settlement.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1971766 from registration records maintained by the CRD for Claimant Dominick Joseph Diorio, Jr. (CRD Number 2447817) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dominick Joseph Diorio, Jr. 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:

In a FINRA arbitration case that was filed on February 12, 2018, 19 customers brought the arbitration case against Aegis Capital Corporation (“Aegis”) and 20 of its personnel, including 5 people who were at one time the Chief Compliance Officer during parts of the relevant time period; 4 registered representatives who are also the 4 partners that owned Aegis; 8 registered representatives, including Claimant, who were and still are employed by Aegis; 3 registered representatives who are no longer employed by Aegis but were during the relevant time period. The arbitration case, which sought net out-of-pocket losses of \$4,507,959 and treble damages of \$13,523,877, was filed by Cold Spring Advisory Group (“Cold Spring”), a non-attorney limited liability corporation run by the owner, who was barred

by FINRA in 2013, and his wife. Cold Spring cold calls for leads and offers loss recovery through FINRA arbitration upon receipt of an upfront payment to cover the cost of a forensic evaluation of any alleged or potential loss.

Two of the participants (customer "BS" and customer "SAM") in this arbitration case were clients of Claimant and, along with all the other participants, claimed most of the investments in their accounts were unauthorized and unsuitable, and they had net out-of-pocket losses due to churning.

BS was Claimant's client before Claimant joined Aegis, beginning with \$80,000 in penny stocks. When Claimant joined Aegis in July 2011, the customer soon came with him and opened a non-discretionary account on December 10, 2012, with the transfer of 437,392 shares of Location Based Technologies Inc. stock valued at \$131,217.60. On his account application from dated March 23, 2016, the customer declared his Annual Income was \$100,000 - \$199,999; Liquid and Total Net Worth was \$1,000,000 - \$2,999,999; Investment Objective was Speculation; Risk Tolerance was High Risk; Investment Time Horizon was 12 years or more; Annual Liquidity Needs were less than \$1,000; and that he had 5 years of experience investing in stocks. The customer was a wealthy person who inherited two buildings from his father and was the owner/salesperson of a ticket brokering business.

BS was an active and aggressive trader and due to the frequency of his trading, he was required to sign an Active Trading Letter, Day Trading Disclosure Agreement, and IPO Certification Form. The customer would call Claimant 2-3 times a day not asking for investment advice but for technical analysis of trading averages and stock price movements. He also shadowed trades at TD Waterhouse in order to lower his cost of owning any stock. At no time did the customer express any dissatisfaction with the performance of his account at Aegis or with Claimant's service.

BS was forced to liquidate most of his Aegis account and to take unnecessary losses due to his involvement in a Ponzi scheme associated with the purchase of tickets to various sporting events. His largest loss was in the stock, Sunedision, Inc., which was his stock pick, and the second largest loss was in Location Based Technologies, Inc. The customer still maintains a small, inactive account at Aegis consisting of an RBC Insured Deposit which generates monthly interest.

In the underlying FINRA arbitration case, the customer claimed net out-of-pocket losses due to churning by Claimant. The parties participated in a mediation on May 9-10, 2019. Claimant did not participate in the mediation and would have preferred to fight this claim. Aegis agreed to settle the customer's claim for 31.6% of the amount asked on June 3, 2019. Claimant did not contribute to the settlement.

SAM, like BS, belonged to a penny stock trading group that was introduced to Claimant by the son of one of his customers. The customers opened a Joint Account at Aegis on October 6, 2015 and the husband opened an individual retirement account on the same day. Both accounts were non-discretionary. On both account application forms, the customers declared an Annual Income of \$100,000-\$199,999; Liquid Net Worth of \$500,000-\$999,999; Total Net Worth of \$1,000,000-\$2,999,999; Investment Objective of Aggressive Growth/Aggressive Income; Risk Tolerance of Moderate Risk; Investment Time Horizon of 12 years or more;

and Annual Liquidity Need of less than \$1,000; and 10+ years of experience in investing in stocks.

Claimant interacted with the husband in person once a month and spoke with him frequently by telephone. At no time did the customers express any dissatisfaction with the performance of their Aegis accounts or with Claimant's service. The customers claimed net out-of-pocket losses due to churning. Although Claimant would have preferred to fight this claim, Aegis settled it on May 30, 2019 for 31.9% of the amount asked. Claimant did not participate in the settlement discussions or contribute to the settlement amount.

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 events giving rise to the dispute. Accordingly, as a party, Respondent Aegis Capital Corporation 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 22, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: January 22, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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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

Karen Isabel Bedrosian -
Richardson

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature

Karen Isabel Bedrosian - Richardson

Karen Isabel Bedrosian - Richardson
Sole Public Arbitrator

02/03/2021

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.

February 03, 2021

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