

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brian Glen Kasteler

Case Number: 20-02136

vs.

Respondent
MML Investors Services, LLC

Hearing Site: Salt Lake City, Utah

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 Glen Kasteler (“Claimant”): Erica J. Harris, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent MML Investors Services, LLC (“Respondent”): Julie E. Ravis, Esq., Stevens & Lee, Reading, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: July 7, 2020.
Claimant signed the Submission Agreement: July 6, 2020.

Statement of Answer filed by Respondent on or about: September 9, 2020.
Respondent signed the Submission Agreement: September 23, 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 stated that they took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1521537, 1555804, and 1555806 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 Occurrence Numbers 1521537, 1555804, and 1555806 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 Occurrence Numbers 1521537, 1555804, and 1555806;
4. Compensatory damages in the amount of \$1.00; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator:

1. Deny Claimant's request for \$1.00 in damages; and
2. Assess all forum fees and costs associated with this proceeding against Claimant, in accordance with FINRA Rule 13805(d).

At the telephonic hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 30, 2020, Claimant filed a death record or obituary for one of the customers in Occurrence Number 1555804 ("Mr. TR") and one of the customers in Occurrence Number 1555806 ("Mr. ER").

On December 1, 2020, Claimant advised that the customers in Number Occurrence Number 1521537 ("Mr. DW and Mrs. SW"), one of the customers in Occurrence Number 1555804 ("Mrs. GR"), and one of the customers in Occurrence Number 1555806 ("Mrs. NR") were served with the Statement of Claim and notice of expungement, sent by FedEx. On December 8, 2020, Claimant filed an Affidavit signed by Claimant's counsel advising that Mr. DW, Mrs. SW, Mrs. GR, and Mrs. NR were served with the Statement of Claim and notice of the expungement hearing, sent by FedEx. The Arbitrator found that Mr. TR and Mr. ER could not be served as they were deceased and did not require service on their estates.

Hereinafter, Mr. DW, Mrs. SW, Mr. TR, Mrs. GR, Mr. ER, and Mrs. NR are collectively referred to as "Customers."

The Arbitrator conducted a recorded, telephonic hearing on January 7, 2021, as agreed to by both parties, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and in the hearing said that they did not support or oppose the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that Mr. DW, Mrs. SW, Mrs. GR, and Mrs. NR had notice of the expungement request and hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the Central Registration Depository (“CRD”).

The Arbitrator reviewed the settlement documents for Occurrence Number 1521537, 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. Although Claimant contributed to the settlement amount, Claimant’s reason for doing so was credible and on the basis of an economic decision relating to legal costs of defense. All liability was expressly denied as part of the settlement.

The Arbitrator also reviewed the settlement documents for Occurrence Numbers 1555804 and 1555806, 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: Statement of Claim; Claimant’s testimony; Claimant’s Exhibits; Claimant’s BrokerCheck® Report; and the settlement agreements.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 1521537 from registration records maintained by the CRD for Claimant Brian Glen Kasteler (CRD Number 2182796) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Glen Kasteler 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:

Claimant presented evidence that the customers, Mr. DW and Mrs. SW were informed of the nature and performance of the investments in question and entered into the purchase fully notified and acknowledging its possible performance. In Claimant's Exhibits 28 through 31, the universal life insurance policies illustrations supporting the sale of the insurance policies in question clearly state that the results are not guaranteed and are not likely to occur and the policy will lapse without value if premiums are not paid. The annuity tables presented in the illustrations also show in the future years, neither the account value nor cash surrender value of the policies would be adequate to recover the premiums paid or that they would be enough to make a profit. These illustration presentations were signed by customers, Mr. DW and Mrs. SW.

While the sale of life insurance annuities to elderly couples does give rise to a question of suitability, evidence was presented that Mr. DW and Mrs. SW were in good health. Moreover, at a later time, Mr. DW and Mrs. SW stated that they understood they were expected to live too long to make a later sale of the policies viable. Evidence was presented that sale of the policies to a third party was a transaction proposed by Claimant not at the time of selling the policies, but around 2008 when Mr. DW and Mrs. SW were experiencing cash flow difficulties. The Arbitrator concludes that suitability of the sale of these types of life policies would not be unreasonable under the circumstances.

Because Respondent did not take a position in this hearing or present any evidence to support the original claims or to contradict Claimant's evidence and Mr. DW and Mrs. SW did not appear or present any supporting evidence for the allegations, the claim must be found to be false. While Mr. DW and Mrs. SW might have been unhappy, there was no evidence of wrongdoing found on the part of Claimant who went out of his way to provide additional liquidity to Mr. DW and Mrs. SW by trying to sell the policies in question.

2. Claimant's request for expungement of Occurrence Numbers 1555804 and 1555806 from his CRD records is denied due to the expiration of the statute of limitations on issues first addressed by the Arbitrator at the initial pre-hearing conference.
3. 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 events 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 14, 2020 1 session		
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: January 7, 2021 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

Suanne M. Parro

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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

Suanne M. Parro

Suanne M. Parro
Sole Public Arbitrator

02/02/2021

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)