

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard Sica

Case Number: 20-02145

vs.

Respondent
Financial Square Partners

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

REPRESENTATION OF PARTIES

For Claimant Richard Sica: Irwin Wetz, Esq., Wetz Kakos Gerbi Wolinetz Volynsky, LLP, Mineola, New York.

For Respondent Financial Square Partners: John Polanin, Jr., CCO, Financial Square Partners, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 7, 2020.

Richard Sica signed the Submission Agreement: July 7, 2020.

Financial Square Partners did not file a Statement of Answer and 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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 20160 (“Customer A”) and 224516 (“Customer B”), and compensatory damages in the amount of \$1.00 from Respondent.

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 is bound by the determination of the Arbitrator on all issues submitted.

On March 12, 2021, Claimant advised that Customer A (Occurrence Number 20160) is deceased, and Claimant submitted a copy of Customer A’s obituary.

On March 12, 2021, Claimant advised that Customer B (Occurrence Number 224516) was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on April 9, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

Customer B participated in the expungement hearing and supported the expungement request. The Arbitrator found that the Customer B 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 occurrences in the CRD.

Due to the age of the underlying customer disputes, no settlement documentation could be provided, and thus the Arbitrator did not review any settlement documentation related to Occurrence Numbers 20160 and 224516. On March 12, 2021, Claimant filed a submission detailing his efforts to obtain the settlement documentation, which the Arbitrator determined to be sufficient. Customer B testified that he could not recall if there had been a settlement in Occurrence Number 224516. Claimant testified 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 determined that expungement of these occurrences is warranted, despite being unable to review the settlement documentation.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s BrokerCheck Report; documents demonstrating that proper service was attempted; Customer A’s obituary; documents demonstrating that reasonable efforts were made to obtain any settlement agreements; and testimony from Customer B.

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 Numbers 20160 and 224516 from registration records maintained by the CRD for Claimant Richard Sica (CRD Number 1756940) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Sica 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

This case involves two (2) occurrence numbers. The first is Occurrence Number 20160 and is dated September 4, 1992. This occurrence involves the alleged failure of Claimant to apply the lower negotiated commission schedule to certain transactions for Customer A. The testimony given clarifies that the commission amount for trades was not determined by Claimant, but rather by a separate team. This separate team determines the commission amount, and that team enters that commission amount on the trade slip. Therefore, the Arbitrator finds that Claimant was not involved in the alleged investment-related sales practice, and thus expungement is recommended for Occurrence Number 20160 because Rule 2080(b)(1)(B) has been satisfied.

The second Occurrence Number is 224516 and is dated January 1, 1995. This occurrence involves a misunderstanding concerning the number of shares that Customer B had authorized for purchase. From the prior trading history of Customer B, it was determined that the number of shares traded in this transaction were far greater than the typical number of shares that Customer B had traded in prior transactions. Customer B testified that the number of shares purchased in this transaction was ten-times the number authorized. Customer B's testimony carried significant weight in determining that this matter was a misunderstanding that Claimant corrected. This matter was amicably resolved. Therefore, the Arbitrator finds that the claim is false, and thus expungement is recommended for Occurrence Number 224516 because Rule 2080(b)(1)(C) has been satisfied.

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 events 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: November 2, 2020	1 session	

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

Howard L. Sobel

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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

Howard L. Sobel

Howard L. Sobel
Sole Public Arbitrator

04/15/2021

Signature Date

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April 15, 2021

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