

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Donald Milton Adkins II

Case Number: 20-02187

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Raleigh, North Carolina

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

This case was administered under the Special Proceeding option for simplified cases.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Donald Milton Adkins II: Zachary T. Hayes-Macaluso, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent Wells Fargo Clearing Services, LLC: Charlton Young, Esq., Wells Fargo Clearing Services, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: July 10, 2020.

Donald Milton Adkins signed the Submission Agreement: July 10, 2020.

Statement of Answer filed by Respondent on or about: August 28, 2020.

Amended Statement of Answer filed by Respondent on or about: September 1, 2020.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: September 1, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of a termination disclosure from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, as amended, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1070474 and compensatory damages in the amount of \$1.00 from Respondent.

In the Amended Statement of Answer, Respondent requested: dismissal of the Statement of Claim in its entirety and with prejudice; an award to Respondent for the costs and expenses of this arbitration; and such other and further relief as was just and proper.

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.

On or about September 1, 2020, Respondent filed an Amended Statement of Answer and removed an embedded Motion to Dismiss from the Answer, in compliance with Rule 13206 of the Code of Arbitration procedure (the "Code").

On September 4, 2020, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code. On October 6, 2020, Claimant filed a response opposing the Motion to Dismiss. On November 10, 2020, the Arbitrator heard oral arguments on the Motion to Dismiss and issued an Order in which he deferred ruling until the conclusion of the evidence at the final hearing.

The Arbitrator conducted a recorded hearing by videoconference on March 11, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, opposed the request for expungement.

During the hearing, Respondent raised the eligibility rule as part of its argument that the expungement should be denied. Based on his ruling set forth in the Award section below, the Arbitrator deemed Respondent's Motion to Dismiss moot.

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 has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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. Claimant Donald Milton Atkins II's (CRD Number 1674318) request for expungement of Occurrence Number 1070474 from his registration records maintained by the CRD is denied.

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

I find that the information contained on the Claimant's BrokerCheck® report for Occurrence Number 1070474 is accurate, not defamatory and in fact admitted by Claimant. Accordingly, the request for expungement is denied. While it appears that Claimant did not act fraudulently or with any malicious intent in submitting the loan applications in question, I felt expungement should be denied as the BrokerCheck® report correctly describes the events that occurred.

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 100.00
Pre-Hearing Conferences: November 5, 2020 1 session
November 10, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 11, 2021 1 session

Total Hearing Session Fees = \$ 150.00

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

Richard S. Zaifert

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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

Richard S. Zaifert

Richard S. Zaifert
Sole Public Arbitrator

03/24/2021

Signature Date

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March 24, 2021

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