

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

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In the Matter of the Arbitration Between:

Claimant  
David Carl Stokes

Case Number: 20-02191

vs.

Respondent  
Cetera Advisor Networks LLC

Hearing Site: New Orleans, Louisiana

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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: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant David Carl Stokes: Frances Menzer, Esq. and Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Cetera Advisor Networks LLC: David Feldstein, Esq., Cetera Financial Group, New York, New York.

**CASE INFORMATION**

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

David Carl Stokes signed the Submission Agreement: July 10, 2020.

Statement of Answer filed by Respondent on or about: September 4, 2020.

Cetera Advisor Networks LLC signed the Submission Agreement: August 31, 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 did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 61114, 61115 and 61116; compensatory damages in the amount of \$1.00 from Respondent; and any

and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent requested: a statement by the Arbitrator on whether to recommend expungement of the customer complaints from Claimant's CRD records in the form required by FINRA Rule 2080; denial of Claimant's request for \$1.00 in compensatory damages; and, an order that all forum costs and fees be assessed against Claimant.

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 15, 2020, Claimant filed an Affidavit signed by Claimant's counsel advising that the customers in Occurrence Numbers 61114 ("Customers A and B"), 61115 ("Customer C") and 61116 ("Customer D"), collectively herein referred to as ("Customers"), were served with the Statement of Claim and with notice of the date and time of the expungement hearing. The Affidavit also noted that Customer A was deceased and contained public information available on the Lexis Nexis Database reflecting the death of Customer A.

The Arbitrator conducted a recorded, telephonic hearing on January 19, 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 occurrences in the CRD.

On December 30, 2020, Claimant filed with FINRA Dispute Resolution Services a notice that he did not have the settlement agreement for Occurrence Number 61114 in his possession and that Respondent had confirmed in writing that it had no documents, including the settlement agreement, responsive to Claimant's discovery requests. Accordingly, the Arbitrator was not able to review a settlement agreement for Occurrence Number 61114.

The Arbitrator reviewed the settlement documents for Occurrence Numbers 61115 and 61116, 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 settlement not opposing the expungement request. The Arbitrator also noted that Claimant was required to contribute his insurance deductible by his Errors and Omissions insurance carrier for the settlements in Occurrence Numbers 61114, 61115 and 61116.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the testimony of Claimant; Claimant's Exhibit 1 – Letter from Customer D dated 5/9/1991; Claimant's Exhibit 2 – Responses to Inquiry Letters re: Customer C dated 5/15/2002; Claimant's Exhibit 3 – Customer C's Settlement Agreement dated 5/9/1991 – Redacted; Claimant's Exhibit 4 – Customer D's Settlement Agreement dated 6/10/1991 – Redacted; Claimant's Exhibit 5 – ING Advisors Network CEO's Letter to the Certified Financial Planner Board of Standard's, Inc. ("CFPBSI") dated 7/2/2002; Claimant's Exhibit 6 – Financial Consulting Group, Inc. CFP's Letter to the CFPBSI dated 7/30/2002; and Claimant's Exhibit 7 – CFPBSI Panel Decision dated - 2/5/2003.

### **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 61114, 61115 and 61116 from registration records maintained by the CRD for Claimant David Carl Stokes (CRD Number 1206789) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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:

Claimant testified that Occurrence Numbers 61114, 61115 and 61116 were virtually identical. Each occurrence involved high-net-worth customers whose investment portfolio invested a small portion in limited partnerships. Claimant, a recent college graduate at the time, was introduced to each of the Customers shortly after beginning his financial advisor career at Resource Management, Inc. Claimant testified that his role at Resource Management, Inc. was as a service provider to his superiors who formulated investment plans and made investment recommendations. Claimant was an assistant. He was not involved with the formation or recommendation of investment plans to the Customers.

Each of the Customers were invested in a broadly diversified portfolio which consisted of equities, mutual funds and real estate investment trusts. Limited partnerships were purchased in the early 1980's by the Customers to achieve income-tax advantages. Each customer received and reviewed the offering and disclosure documents. All limited partnership purchases were authorized by the Customers. The Customers consulted with

their tax and legal experts prior to purchasing the limited partnership investments. The limited partnerships performed well and achieved the desired investment results. In late 1986, provisions of the Tax Reform Act of 1986 made it difficult for limited partnership investors to profit as they had in prior years. In fact, limited partnerships lost most of their value and the secondary market had vanished.

From 1988 through 1991, the Customers individually filed their complaints with Resource Management, Inc. The Customers' chief complaint was the poor performance of the limited partnerships. Upon being named in the Customers' complaints, Claimant consulted with his Errors and Omissions insurance carrier. The carrier decided to settle all claims relating to the limited partnership allegations. Claimant was not involved in the settlement negotiations. Claimant was required by his insurance carrier to contribute his insurance deductible for each Occurrence. Claimant was not subject to any disciplinary actions from his employer as a result of the allegations.

Expungement of Occurrence Numbers 61114, 61115 and 61116 are being recommended under FINRA Rule 2080(b)(1)(A) because the Customers' allegations are factually impossible and clearly erroneous. Poor investment performance is not a basis for a claim. The Customers were fully informed of the investment risks prior to purchase.

Expungement of Occurrence Numbers 61114, 61115 and 61116 are being recommended under FINRA Rule 2080(b)(1)(C) because the Customers' allegations are false. Claimant was not involved with the formation or the recommendation to purchase limited partnerships. Claimant was an assistant. Claimant was also not involved in the formation or recommendation of investment plans to the Customers.

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:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing Conference: November 10, 2020 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: January 19, 2021 1 session	

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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**

David A. Schuler

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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**

***David A. Schuler***

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David A. Schuler  
Sole Public Arbitrator

**01/25/2021**

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Signature Date

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January 25, 2021

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