

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Gary Richard Nuccio

Case Number: 20-02244

vs.

Respondent
Ameriprise Financial Services, LLC

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 Gary Richard Nuccio: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent Ameriprise Financial Services, LLC: Howard M. Klausmeier, Esq., Ameriprise Financial Services, LLC, Troy, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: July 16, 2020.

Gary Richard Nuccio signed the Submission Agreement: July 16, 2020.

Statement of Answer filed by Respondent on or about: September 2, 2020.

Ameriprise Financial Services, LLC signed the Submission Agreement: September 2, 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 concurred with Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1114941, 1156414, 1269905 and 1605976; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested: expungement of customer dispute information from registration records maintained by the CRD of Claimant; and denial of any and all relief requested against Respondent.

At the beginning 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 or about November 27, 2020, Claimant advised that the customers in Occurrence Numbers 1156414, 1269905 and 1605976 ("Customers") were served with a copy of the Statement of Claim, notice of the date and time of the expungement hearing and of their right to participate therein. On or about January 5, 2021, Claimant filed with FINRA Dispute Resolution Services proof of service via FedEx upon the Customers, advising that the Customers were served with a copy of the Statement of Claim and notice of the date and time of the expungement hearing.

On or about January 19, 2021, Claimant filed with FINRA Dispute Resolution Services, the certificate of death reflecting that the underlying customer involved in Occurrence Number 1114941 ("Customer") passed away on August 30, 2004.

The Arbitrator found that the lack of service on the underlying Customer involved in Occurrence Number 1114941 of the Statement of Claim and notice of the expungement hearing, is excused because the Customer is deceased.

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. However, Respondent did appear at the beginning of the expungement hearing and, as stated in the Statement of Answer, concurred with 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.

The Arbitrator noted that the disputes related to Occurrence Numbers 1114941, 1156414, 1269905 and 1605976 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: testimony of Claimant; and Exhibits A and C to H of Claimant's Memorandum of Law in Support of Expungement.

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 1114941, 1156414, 1269905 and 1605976 from registration records maintained by the CRD for Claimant Gary Richard Nuccio (CRD Number 1779887) with the understanding that, pursuant to Notice to Members 04-16, Claimant Gary Richard Nuccio 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:

Occurrence Number 1114941

The Customer withdrew her “complaint,” since she never intended the letter that she sent to be construed as a complaint. The Customer was merely recounting and recapping some things that had occurred due to market volatility, but she was not complaining about Claimant at all. The Customer took no further action and remained a Customer of Claimant for several years until her passing.

Occurrence Number 1156414

The claim of unsuitability was fully investigated by Respondent, and it was found that there was no merit to the claim that the funds were mismanaged. The Customer took no further action. The Arbitrator found that the investments were suitable.

Occurrence Number 1269905

The Customer’s complaint that his fee-based account was inappropriate was investigated and denied by Respondent. The Customer took no further action. Respondent found that moving to a transaction-based brokerage account was not appropriate nor consistent with the Customer’s stated financial goals and objective to keep costs down. The Arbitrator found that the Customer’s account was appropriate.

Occurrence Number 1605976

The Customer claimed that she was invested too aggressively, and her portfolio allocation was unsuitable. To the contrary, Respondent denied the claim. The Customer took no further action. Claimant advised a less aggressive allocation, the opposite of what the Customer claimed.

With respect to all four occurrences, Claimant testified that they were non-discretionary accounts and that no action could be taken without the customer's express approval. Due to document retention rules, Respondent responded during discovery proceedings that no written evidence was available for any of these transactions. However, Claimant testified that customer forms and customary documents were completed by each of the four Customers for each of the occurrences, and Claimant always advised the Customers in accordance with the customer profiles they had given him at the time they opened the accounts or as changed from time to time. In addition, not only did Respondent not object to Claimant's request for expungement, Respondent appeared solely at the expungement hearing to request that the Arbitrator grant Claimant's request for expungement on all four occurrences.

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 12, 2020 1 session

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

Anna Lascar

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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

Anna Lascar

Anna Lascar
Sole Public Arbitrator

01/22/2021

Signature Date

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January 22, 2021

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