

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Dennis Daniel Herrera

Case Number: 20-02282

vs.

Respondents
BlackBook Capital LLC
Hunter Scott Financial LLC
John Thomas Financial
Charles Vista LLC
Aegis Capital Corp.

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. Members

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Dennis Daniel Herrera: Michael H. Ference, Esq. and Thomas P. McEvoy, Esq., Sichenzia Ross Ference LLP, New York, New York.

For Respondent BlackBook Capital LLC: Franklin Ogele, BlackBook Capital LLC, Hillside, New Jersey.

Hunter Scott Financial LLC did not enter an appearance in this matter.

John Thomas Financial did not enter an appearance in this matter.

Charles Vista LLC did not enter an appearance in this matter.

Aegis Capital Corp. did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: July 20, 2020.

Dennis Daniel Herrera signed the Submission Agreement: July 20, 2020.

Statement of Answer filed by BlackBook Capital LLC on or about: August 10, 2020.
BlackBook Capital, LLC signed the Submission Agreement: August 11, 2020.

Hunter Scott Financial LLC did not file a Statement of Answer or sign the Submission Agreement.

John Thomas Financial did not file a Statement of Answer or sign the Submission Agreement.

Charles Vista LLC did not file a Statement of Answer or sign the Submission Agreement.

Aegis Capital Corp. did not file a Statement of Answer or 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”).

In the Statement of Answer, Respondent BlackBook Capital LLC denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1330218, 1376926, 1649154, and 1763136; and compensatory damages in the amount of \$1.00 from Respondents.

On September 11, 2020, Claimant withdrew his request for expungement of Occurrence Numbers 1376926 and 1649154.

In the Statement of Answer, Respondent BlackBook Capital LLC requested that Claimant’s claim be dismissed; and for other such relief as the Panel finds 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.

Respondents Hunter Scott Financial LLC, John Thomas Financial, Charles Vista LLC, and Aegis Capital Corp. did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and are bound by the determination of the Arbitrator on all issues submitted.

On February 17, 2021, Claimant advised that the customers in Occurrence Numbers 1330218 and 1763136 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on March 30, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents did not participate in the expungement hearing.

The customers in Occurrence Numbers 1330218 and 1763136 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 settlement documentation related to Occurrence Number 1330218 was not available due to the age of the complaint. The Arbitrator determined that expungement is still appropriate because on or about December 11, 2020, Claimant served his First Request for Documents on the Respondents, and in particular, a copy of the settlement agreement with Respondent Hunter Scott, but the Respondents never responded to these demands. The Arbitrator considered the amount of payment made to any party to the settlement. Claimant testified 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.

The Arbitrator reviewed the settlement documentation related to Occurrence Number 1763136, considered the amount of payment 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. The Arbitrator noted that Claimant contributed to the settlement amount but expungement is still appropriate because Claimant decided to settle the arbitration for the estimated costs of defense (\$14,500.00) on advice of counsel due to the costs of defending and proceeding to an evidentiary hearing, coupled with traveling expenses associated with a multi-day hearing.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings, exhibits, Claimant's BrokerCheck® Report, and Claimant's testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded 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 Number 1330218 from registration records maintained by the CRD for Claimant Dennis Daniel Herrera (CRD Number 4618370) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dennis Daniel Herrera 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Notably, as Claimant credibly testified to at the hearing, he had no role in handling this customer's account and was not responsible for any investment advice, or execution of any trades; and no role in discussing performance of investments or commissions. Claimant only received a salary and did not share in the commissions generated from the activity in the customer's account. The Arbitrator finds the testimony to be credible, which warrants his recommendation that the CRD entry be expunged.

It was only in 2005, approximately one year after Claimant opened the account for the customer, when Claimant learned of a complaint filed by the customer. Claimant's compliance officer at the time advised him that, although Claimant was not named in the complaint, it was being reported on his Form U4 because he was a part of the senior broker's team and had a role in opening the account.

The customer's complaint never evolved into an arbitration or other legal proceeding, but he alleged that the commissions were too high given the losses in the account and was seeking \$47,000 in damages. Claimant learned from his compliance officer, however, that Hunter Scott Financial LLC ("Hunter Scott") chose to settle with the customer for \$40,000.00. Claimant did not contribute to the settlement nor was he asked to do so, and he was not a party to any settlement agreement.

The premise of the customer's complaint, as reported on Claimant's CRD records and BrokerCheck® Report, is that he was overcharged commissions in light of the lost value in the account. As the evidence demonstrates, Claimant was not involved in any of the trading activity in the account. As a junior broker at the time, Claimant's role with respect to the account was simply to open it, at which point the account was transferred to a senior broker for handling. As Claimant testified at the hearing, he never: 1) provided investment advice to the customer; 2) executed any trades in the account; 3) discussed the performance of the investments in the account; or 4) discussed the commissions that the assigned broker was charging. Claimant never spoke to the customer about the account after it was opened, and the customer never complained to Claimant about any of the activity in the account.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1763136 from registration records maintained by the CRD for Claimant Dennis Daniel Herrera (CRD Number 4618370) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dennis Daniel Herrera 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, 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:

This customer complaint is simply false and contrived. The premise of the customer's complaint, as reported on Claimant's CRD records and his BrokerCheck® Report, alleges that Claimant made unsuitable investments, resulting in alleged losses of approximately \$30,500.00. The specific investment was a private placement in Fisker, Inc. ("Fisker"), an electric car manufacturer that went bankrupt. Claimant had recommended this investment, while at Charles Vista LLC ("Charles Vista"), to the customer based on the customer's actual investment experience, financial wherewithal as a wealthy businessman and accredited investor, and his stated investment objectives, which he self-reported on his account documents as speculation and risk tolerance as aggressive.

As Claimant testified at the hearing, sometime between 2010 and 2013, while Claimant was employed by Charles Vista, a junior broker opened the customer's account and introduced the customer to Claimant. The customer was a wealthy individual who owned his own farming business in the State of Washington. The customer was also an enthusiastic and active stock trader who had an expressed interest in penny stocks. Charles Vista provided the customer with monthly statements as well as trade confirmations for every transaction in the account.

In early 2011, Claimant voluntarily left Charles Vista and took a position with BlackBook Capital LLC ("BlackBook"). The customer would have received monthly statements and trade confirmations for activities in the account at BlackBook. In August 2014, Claimant voluntarily resigned from BlackBook and accepted employment at Laidlaw & Co. ("Laidlaw"). The customer attempted to follow Claimant to Laidlaw, but since the customer already had an open account with another registered representative at Laidlaw, Laidlaw precluded him from opening a second account and did not allow him to "partner" with the existing registered representative. Thus, Claimant stopped servicing the customer's accounts after he began working for Laidlaw. The Arbitrator finds Claimant's testimony to be credible, which warrants his recommendation that the CRD entry be expunged.

Further, in 2015, at the time Claimant was at Laidlaw, he received a call from a person (Mr. O), who, according to his FINRA BrokerCheck® Report, is a former Registered Representative and is barred by FINRA from acting in any capacity in the securities industry. Claimant testified that he ultimately learned that Mr. O was the founder of Cold Spring Advisory Group ("Cold Spring"), a for-profit company that advertises on its website that its mission is to solicit investors in order to file claims against brokers.

Mr. O advised Claimant that he was representing the customer in regard to his investment in Fisker and that the customer had a loss in the company claiming that the investment was unsuitable for the customer. Claimant was threatened that unless Claimant agreed to pay approximately \$30,500.00 as a settlement, a claim would be filed. The customer did invest in a Fisker private placement, while Claimant was employed by

Charles Vista and while the customer held his account there. Moreover, Claimant recommended the Fisker investment based upon the customer's stated risk tolerance, investment objectives, and market research. The customer represented to Claimant that he was an accredited investor who was suitable to participate in the private placement. In connection with the private placement, the customer received offering documents and completed a Subscription Agreement and Investor Questionnaire, which advised him of the investment risks, including the fact that investors may lose their entire investment. The customer indicated affirmatively that he understood the risks of the investment and elected to invest approximately \$50,000.00 in the offering. In 2013, well after the customer invested in the offering, Fisker filed for bankruptcy.

Cold Spring filed a FINRA arbitration naming Claimant and others as Respondents. It sought damages in connection with losses allegedly incurred by the customer in his accounts at Charles Vista and BlackBook. Claimant hired his own attorney, and in light of the costs of defending and proceeding to an evidentiary hearing, coupled with traveling expenses associated with a multi-day hearing, Claimant decided to settle the arbitration for the estimated costs of defense (\$14,500.00) on advice of counsel. As consideration for same, the customer and Claimant signed a mutual release, releasing all claims against each other.

Therefore, by a preponderance of the credible evidence, the Arbitrator finds the foregoing demonstrates that the customer's complaint against Claimant is false and, therefore, recommends expungement of this occurrence from Claimant's CRD and other industry file.

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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Hunter Scott Financial LLC, John Thomas Financial, Charles Vista LLC, BlackBook Capital LLC, and Aegis Capital Corp. are each 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 11, 2020	1 session	
One (1) hearing session on expungement request @ \$ 50.00/session	= \$	50.00
Hearing: March 30, 2021	1 session	
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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

Harvey Barrison

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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

Harvey Barrison

Harvey Barrison
Sole Public Arbitrator

04/19/2021

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.

April 19, 2021

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