

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Richard Carmine Cella, III

Case Number: 20-02330

vs.

Respondent

Investors Capital Corp.

Hearing Site: Boston, Massachusetts

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 Carmine Cella, III: Michael B. Cosentino, Esq., Wilchins Cosentino & Novins LLP, Wellesley, Massachusetts.

For Respondent Investors Capital Corp.: David Feldstein, Esq., Cetera Financial Group, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 4, 2020.

Richard Carmine Cella, III signed the Submission Agreement: August 11, 2020.

Statement of Answer filed by Respondent on or about: October 22, 2020.

Investors Capital Corp. signed the Submission Agreement: October 22, 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 Number 1711480, and all other relief that FINRA deems just.

In the Statement of Answer, Respondent requested a statement from the Panel on the issue of whether to order recommending that the customer complaint be expunged from Claimant's CRD records in the form required by FINRA Rule 2080, denial of the request for all other relief that FINRA deems just, and that all forum costs and fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel acknowledges having read the pleadings and other materials filed by the parties.

On January 20, 2021, Claimant filed an Affidavit confirming that the customer in Occurrence Number 1711480 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded, telephonic hearing on February 23, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customer also did not participate in the expungement hearing. The Panel found that the Customer had notice of the expungement request and hearing.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation related to Occurrence Number 1711480, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted 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.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the Purchaser Questionnaire; the Customer's Financial Statement; the Purchase Agreement and Escrow Instructions; and the Tenants in Common Agreement signed by the Customer.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to Occurrence Number 1711480 from registration records maintained by the CRD for Claimant Richard Carmine Cella, III (CRD Number 1225988) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Richard Carmine Cella, III 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

Claimant provided testimony and documentation into evidence to support his argument that the investment was not unsuitable as alleged by the Customer in the complaint filed against Respondent. In 2008, to purchase the “Tenants in Common Interests”, which the Customer alleged were “unsuitable,” the Customer completed a Purchaser Questionnaire for each of the three investments. The Customer was 49 years old when the documents were signed, and the investments were purchased. The Customer represented and warranted that he was an “accredited investor” as defined in Regulation D promulgated under the Securities Act of 1933, as amended. The Customer indicated he had a high net worth, as well as a high annual income. The Customer indicated he had the requisite knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the purchase of the Interests. The Customer provided a description of his experience in financial and business matters as follows: “Owner (Part) of Winston Brothers Inc./Winston Flowers of Boston Over 20 years of experience with investments in stocks, bonds, mutual funds and real estate.”

The Customer provided additional detailed information in an Investor’s Financial Statement which reported sizable liquid assets, as well as a high net worth. The Customer was notified of this present proceeding, but did not provide any information, and did not attend the hearing. Claimant began providing investment advisory services to the Customer in 2002. Claimant provided testimony of the Customer’s experience and background, based on Claimant’s knowledge and dealings with the Customer, which were consistent with the other written documentation. The recommendation of these interests by Claimant to the Customer were in response to the Customer’s sale of other real estate and the Customer’s desire to avoid income taxes and qualify for an IRC Section 1031 exchange.

The Panel has determined that the Customer’s allegations of an unsuitable investment are not credible, not supported by the evidence, and therefore factually impossible. For these reasons, the Panel recommends the expungement of this matter from Claimant’s CRD Record.

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 = \$ 1,575.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 1,900.00
Member Process Fee = \$ 3,750.00

Hearing Session Fees and Assessments

The Panel 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 Panel, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the full Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: December 29, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: February 23, 2021 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Arthur J. Giacomarra	-	Public Arbitrator, Presiding Chairperson
Howard N. Gorney	-	Public Arbitrator
Sharon L. Monroe	-	Non-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.

Concurring Arbitrators' Signatures

Arthur J. Giacomarra

Arthur J. Giacomarra
Public Arbitrator, Presiding Chairperson

03/03/2021

Signature Date

Howard N. Gorney

Howard N. Gorney
Public Arbitrator

03/03/2021

Signature Date

Sharon L. Monroe

Sharon L. Monroe
Non-Public Arbitrator

03/03/2021

Signature Date

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March 04, 2021

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