

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Bernard Andre Breton

Case Number: 20-02335

vs.

Respondent
Cetera Advisors, LLC

Hearing Site: Atlanta, Georgia

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.

REPRESENTATION OF PARTIES

For Claimant Bernard Andre Breton (“Claimant”): Michael A. Nagy, Esq., The Law Office of Michael A. Nagy, LLC, Export, Pennsylvania.

For Respondent Cetera Advisors, LLC (“Respondent”): David Feldstein, Esq., Cetera Financial Group, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 24, 2020.
Claimant signed the Submission Agreement: July 23, 2020.

Statement of Answer filed on or about: September 14, 2020.
Respondent signed the Submission Agreement: September 14, 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 1867174,

an award of compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested the denial of Claimant's request for \$1.00 in compensatory damages and that all forum costs and fees be assessed against Claimant.

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 February 2, 2021, Claimant advised that the customers in Occurrence Number 1867174 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice").

The Arbitrator conducted a recorded, telephonic hearing on February 24, 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 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1867174, 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 and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings and Claimant's Exhibits 1-9, 13, 14, 20, and 21.

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 Number 1867174 from registration records maintained by the CRD for Claimant Bernard Andre Breton (CRD Number 2030660) with the understanding that, pursuant to Notice to Members 04-16, Claimant Bernard Andre Breton 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;

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

The claim, allegation, or information is false.

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

Claimant was employed by Respondent as the Chief Compliance Officer. He had no supervisory authority over brokers or direct dealings with customers, nor did he make any buy or sell recommendations. The underlying arbitration was filed by the Customers against Claimant, Respondent, and others. The Customers’ allegations included a claim for failure to supervise their account. In the Statement of Answer filed in the underlying arbitration, Claimant and Respondent denied having any contact with the Customers or supervisory authority over the Customers’ broker. Claimant was voluntarily dismissed by the Customers from the underlying arbitration before the remaining parties reached a settlement. Claimant did not contribute to the settlement.

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
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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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee	= \$	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 @ \$50.00/session		= \$	50.00
Pre-Hearing Conference: November 13, 2020	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: February 24, 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

James C. Hoover

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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

James C. Hoover

James C. Hoover
Sole Public Arbitrator

03/03/2021

Signature Date

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March 03, 2021

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