

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

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In the Matter of the Arbitration Between:

Claimant  
Harold D. Elish

Case Number: 20-02342

vs.

Respondent  
Citigroup Global Markets, Inc.

Hearing Site: New York, New York

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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

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Harold D. Elish: Amy Bard, Esq., Law Offices of Amy Bard, Glen Ridge, New Jersey.

For Respondent Citigroup Global Markets, Inc.: Adam M. Kauff, Esq., Kauff Laton Miller LLP, New York, New York.

**CASE INFORMATION**

Amended Statement of Claim filed on or about: July 28, 2020.  
Harold D. Elish signed the Submission Agreement: July 22, 2020.

Statement of Answer filed by Respondent on or about: September 18, 2020.  
Citigroup Global Markets, Inc. signed the Submission Agreement: September 21, 2020.

**CASE SUMMARY**

In the Amended 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 Amended Statement of Claim, Claimant requested: expungement of Occurrence Number 300487 and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested that the Panel deny in its entirety Claimant's request for an award of damages from Respondent.

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.

A Statement of Claim was filed on July 24, 2020. It was not served on Respondent and not considered by the Arbitrator.

Claimant provided an Affirmation dated March 17, 2021, stating that Claimant was unable to serve the Statement of Claim and the notice of expungement hearing on the customer related to Occurrence Number 300487. Respondent was unable to produce any contact information as it no longer has any records of the customer's account. The Arbitrator found that Claimant made sufficient efforts to serve the customer in this complaint, which was made in 1998, with a copy of the Statement of Claim and notice of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on June 14, 2020, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The customer did not participate in the expungement 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 noted that the dispute related to Occurrence Number 300487 was not settled and, therefore, there was no settlement document to review.

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

### **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 300487 from registration records maintained by the CRD for Claimant Harold D. Elish (CRD Number 1072360) with the understanding that, pursuant to Notice to Members 04-16, Claimant Harold D. Elish 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 finding of fact:

The claim, allegation, or information is false.

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

Claimant demonstrated that the customer claim was false, and was, in fact, not filed by the actual customer, but by a relative of the customer. Claimant provided testimonial evidence that the customer was advised appropriately about the investment, reviewed the risks of the investment with the customer, and that the investment was suitable. Claimant’s manager at the time, who is now Managing Director at Morgan Stanley, in his testimony, supported Claimant’s version of events and also testified that the firm investigated the complaint and found it without merit. While the customer might have been unhappy, there was no wrongdoing.

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

Member Surcharge	= \$	150.00
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#### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

March 23 and 25, 2021 postponement requested by Claimant Waived  
April 30, 2021 postponement requested by the Claimant Waived

**Last-Minute Cancellation Fees**

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

March 23 and 25, 2021 postponement requested by Claimant Waived

**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: December 7, 2020	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: June 14, 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**

Andrew M. Schmertz

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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**

***Andrew M. Schmertz***

Andrew M. Schmertz  
Sole Public Arbitrator

**06/28/2021**

Signature Date

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June 28, 2021

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