

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

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In the Matter of the Arbitration Between:

Claimant  
Gregory Robert Reynolds

Case Number: 20-02385

vs.

Respondent  
Foresters Financial Services, Inc.

Hearing Site: San Diego, California

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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

**REPRESENTATION OF PARTIES**

For Claimant Gregory Robert Reynolds (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

For Respondent Foresters Financial Services, Inc. (“Respondent”): Patrick J. Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: July 27, 2020.  
Claimant signed the Submission Agreement: July 27, 2020.

Statement of Answer filed by Respondent on or about: September 9, 2020.  
Respondent signed the Submission Agreement: September 9, 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 took no position on Claimant’s expungement request and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1854549 from Claimant’s CRD records pursuant to

FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;

2. Expungement of Occurrence Number 1854549 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1854549;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

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 March 1, 2021, Claimant filed an Affidavit confirming that the customer in Occurrence Number 1854549 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on April 8, 2021, 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 found that the Customer 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 reviewed a letter from Respondent to the Customer, dated November 20, 2015, in which Respondent acknowledged a clerical error had occurred in establishing an Educational Savings Account ("ESA") for the Customer's son and Respondent agreed to reimburse the Customer for any tax penalty associated with the data entry error. According to the Statement of Answer and Claimant's testimony, the Customer has not provided Respondent with documentation of any such tax liability and therefore, no reimbursement was made.

The Arbitrator noted that the dispute related to Occurrence Number 1854549 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: the Statement of Claim; the Statement of Answer; Claimant's exhibits; and Claimant's testimony.

## 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 1854549 from registration records maintained by the CRD for Claimant Gregory Robert Reynolds (CRD Number 5669488) with the understanding that, pursuant to Notice to Members 04-16, Claimant Gregory Robert Reynolds 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 claim, allegation, or information is false.

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

In late July 2015, Claimant advised the Customer to rollover his 401(k) Plan into an Individual Retirement Account ("IRA") with Respondent's predecessor. About one month later, the Customer complained that Claimant had not disclosed the sales charge and custodial fees associated with the IRA. Claimant testified that not only did he disclose this information but that the bulk of the meeting at which Claimant advised to do the rollover was devoted to discussing the sales charge and custodial fees. Consistent with Claimant's testimony, the Customer executed a document during this meeting acknowledging that he had considered all factors before authorizing the rollover. Moreover, when the rollover was effectuated, the Customer received a confirmation and summary prospectuses disclosing the fees and charges associated with the IRA. The Customer's complaint that Claimant did not disclose the sales charge and custodial fees associated with the IRA is clearly erroneous and false.

Claimant also advised the Customer to open and invest in an ESA, which the customer did. Contributions to an ESA are tax advantaged so long as the designated beneficiary is less than 18 years old. For more than a year after the Customer's designated beneficiary turned 18 years old, however, the institution holding the ESA continued to take automatic monthly contributions. The excess contributions were mistakenly debited from the Customer's checking account because of a clerical error by one of Respondent's employees when inputting the beneficiary's birth date. This error exposed the Customer to a potential tax liability. Respondent agreed to reimburse the Customer for any tax liability associated with the error, but the Customer never submitted any documentation that the potential liability had materialized. The Customer claimed that Claimant was negligent for failing to monitor

the contributions and to alert him that they had to cease the contributions as of the beneficiary's 18th birthday. Claimant had no duty to monitor contributions to the Customer's ESA, to inform the Customer that the beneficiary had turned 18, or to alert the Customer that contributions had to cease when the beneficiary did so. Therefore, this claim is clearly erroneous and false.

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(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
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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 20, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 8, 2021	1 session	

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Total Hearing Session Fees	= \$	100.00
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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**

Mark R. Lee

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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**

***Mark R. Lee***

Mark R. Lee  
Sole Public Arbitrator

**04/30/2021**

Signature Date

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May 03, 2021

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