

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Alan Walton Sharpe

Case Number: 20-02390

vs.

Respondent
RBC Capital Markets LLC

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 Alan Walton Sharpe: Daniel D'Costa, Esq., D'Costa Law P.C., Hicksville, New York.

For Respondent RBC Capital Markets, LLC (“RBC”): James K. Langdon, Esq. and Tiana M. Towns, Esq., Dorsey & Whitney, LLP, Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2020.

Alan Walton Sharpe signed the Submission Agreement: July 16, 2020.

Statement of Answer filed by Respondent on or about: September 29, 2020.

RBC signed the Submission Agreement: October 5, 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 object to Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1486000; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief

that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent contested the request for compensatory damages in the amount of \$1.00.

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 January 28, 2021, Claimant advised that the customer in Occurrence Number 1486000 ("Customer") had passed away and provided a copy of the Customer's obituary to the Arbitrator for his review.

The Arbitrator conducted a recorded, telephonic hearing on February 9, 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 object to the request for expungement, but contested the request for compensatory damages in the amount of \$1.00. Counsel also noted that Non-Party Wells Fargo, not Respondent, paid the settlement amount and did not have information regarding the Customer's claim or the settlement.

This arbitration and the expungement hearing proceeded without the participation of the Customer. The Customer passed away prior to the commencement of this proceeding. While the Claimant initially did not provide notice of the pendency of his request for expungement to the Customer because of her death, the Arbitrator requested that Claimant seek a copy of the settlement agreement from the Customer's Estate, thereby notifying the Estate of these proceedings. At no time did Claimant, his counsel or FINRA hear from any representative of the Estate regarding this matter. Therefore, the Arbitrator found that the Customer's Estate had notice of the proceedings.

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.

During the hearing, Claimant stated that he was not in possession of a copy of the settlement agreement reached between Non-Party Wells Fargo and the Customer, to which Claimant and Non-Party Wells Fargo were parties. Claimant introduced evidence that the Customer had passed away on April 3, 2020, prior to the commencement of this arbitration. At the conclusion of the hearing, the Chair issued a directive to Claimant to move for an order compelling the Non-Party Wells Fargo and the Estate of the Customer to produce a copy of the settlement agreement reached in FINRA Dispute Resolution Number 09-06070. Upon motion by Claimant, the Chair issued orders for production on February 27, 2021. Following entry of the Chair's Orders of Production, Claimant reported that while efforts had been undertaken to obtain a copy of the settlement agreement from those non-parties, those efforts had been unsuccessful to date. The Chair issued a second directive to continue the process to obtain a copy of the settlement agreement. On March 29, 2021, Claimant submitted a copy of the settlement

agreement received from Non-Party Wells Fargo. Claimant also reported that he had received no response from the Customer's Estate.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1486000, 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 introduced by Claimant without objection by Respondent: an Investment Performance Analysis, which reflected the value of the portfolio during the term of management by Claimant as beating the S&P performance; an email from prior counsel reporting that without the involvement or participation of Claimant, Non-Party Wells Fargo, the other party to FINRA Arbitration Number 09-06070 had settled the dispute with the Customer, and had obtained a release for his benefit; an Account Profile report that appeared to be signed by the Customer indicating her investment objectives, net substantial net worth and preference for income generation; call notes reflecting conversations with the Customer and with her son, in which there is no reference to dissatisfaction with the performance of Claimant. The Arbitrator also relied on the testimony of Claimant.

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 1486000 from registration records maintained by the CRD for Claimant Alan Walton Sharpe (CRD Number 2011593) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 factually impossible or clearly erroneous.

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

Claimant's relationship with the Customer began in or about 1993 based on a cold call. After confirmation of the Customer's investment objectives and concerns, he became aware of alleged malfeasance conducted by her then accountant and adviser. Claimant testified that he arranged to have the Customer retain counsel, who was successful in securing a

settlement from the accountant of approximately \$220,000.00. Thereafter, Claimant invested those settlement funds and by 2008, the portfolio had grown to approximately \$450,000.00. During this period, and in accordance with the investment objectives agreed to by the Customer, the funds were invested to provide income to her, and appreciation to be passed along to her heirs upon her death. In 2008, the value of the portfolio declined. Claimant attributed the decline in value to a devastating economic downturn that year. He testified that in discussion with the Customer, he advised her not to panic, but to hold her investments that he predicted would recover for her benefit and that of her heirs. She converted approximately \$100,000.00 into cash in 2008, and Claimant continued to manage the balance in the non-discretionary account until February 2009, when it was moved to Non-Party Morgan Stanley. Claimant testified that during the course of the relationship he had numerous conversations with the Customer, as well as with her son, in connection with the investment decisions and at no time did he hear of any dissatisfaction with his performance.

Claimant testified that his performance as the Customer's broker was always in conformity with her instructions, objectives, and needs, and the value of the account appreciated during and up to the economic downturn in 2008. He related the prior efforts he undertook to see that funds allegedly stolen from her by her accountant were recovered and that she was always appreciative of his concern for her interests. To the extent the Customer sustained losses, Claimant testified that they were directly caused by the generalized stock market collapse. He also testified that he advised the Customer that her need for income would be met by her existing investments, and that the value of the entire portfolio would rebound eventually for the benefit of her heirs. Claimant testified that had she followed his advice, the account would have not only returned to its original value but increased as the market rebounded over the following years. In October 2009, Claimant received notice of the customer dispute filed by the Customer. He retained separate counsel and intended to vigorously defend the arbitration. Approximately one week before the hearings were to commence, and while Claimant was in New York preparing for the hearings and his testimony, his counsel received notice that Non-Party Wells Fargo had settled the arbitration with the Customer. Claimant testified that he was prepared to defend against the claim and had no intention of settling the claim because he believed it was entirely without merit. Claimant testified that he was never told about the basis for the significant amount of the settlement paid to the Customer, but believed the settlement was reached in order to resolve pending litigation and to facilitate the transaction between Non-Parties Wells Fargo and Wachovia. The Arbitrator recognizes that the settlement amount is significant, but it was reached without Claimant's prior knowledge, consent or negotiation, and he did not contribute toward payment of the settlement amount.

This decision is limited to the claim asserted by the Customer as appearing on the Claimant's CRD records and relating to the claims asserted by the Customer in FINRA Case No. 09-06070. The Arbitrator notes that there are other notices of customer disputes appearing on Claimant's CRD records. No evidence was offered or elicited with respect to any of those other claims. The decision reached in this arbitration and expungement request is limited to the facts of the Customer's claims, and no inference is to be drawn with respect to the merits of any other claims.

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

*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 RBC is assessed the following:

Member Surcharge =\$ 150.00

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 30, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session =\$ 50.00
Hearings: February 9, 2021 1 session

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

Richard J. Grahn

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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

Richard J. Grahn

Richard J. Grahn
Sole Public Arbitrator

04/02/2021

Signature Date

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April 02, 2021

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