

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Dodee Crockett

Case Number: 20-02409

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Dallas, Texas

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 Dodee Crockett (“Claimant”): Michael O’Gara, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Patrick J. Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: July 29, 2020.
Claimant signed the Submission Agreement: July 28, 2020.

Statement of Answer filed on or about: September 2, 2020.
Respondent signed the Submission Agreement: September 2, 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 expungement of Occurrence Numbers 1129144 and 1146146, 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 objected to Claimant's request for \$1.00 in compensatory damages.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 8, 2020, Claimant filed death records for one of the customers in Occurrence Number 1129144 ("D.R.") and for the customer in Occurrence Number 1146146. Claimant advised that the other customer in Occurrence Number 1129144 ("G.R.") was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On December 15, 2020, Claimant filed an Affidavit confirming that G.R. was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

On January 6, 2021, G.R. submitted a letter supporting Claimant's expungement request.

The Arbitrator conducted a recorded, telephonic hearing on March 2, 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, took no position on the request for expungement.

G.R. did not participate in the expungement hearing. The Arbitrator found that G.R. 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 noted that the disputes related to Occurrence Numbers 1129144 and 1146146 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim, Claimant's Expungement Hearing Exhibits 1-3, 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 Numbers 1129144 and 1146146 from registration records maintained by the CRD for Claimant Dodee F. Crockett (CRD Number 724069) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dodee F. Crockett 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 for both Occurrence Numbers 1129144 and 1146146:

The claim, allegation, or information is false.

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

Occurrence Number 1129144:

The customers (D.R. and G.R.) understood the risk of their investments. D.R. was an active, knowledgeable investor. Their chosen risk profile was growth with a willingness to incur up to a 40% loss of principal. The risks of the investments were disclosed to them in writing and verbally by Claimant.

In January 2000, the customers approached Claimant about “jump starting” their portfolio by including technology stocks in their portfolio through a significant reallocation of their existing SMA holdings to an outside manager specializing in new and emerging technologies – TCW. Initially, the TCW account grew in value, but then it declined in line with the dotcom technology collapse in the early 2000s. The decline in the value of the holdings was not specific to TCW’s management but enveloped the technology sector.

The customers’ assertion that the recommendation to utilize TCW caused them to incur losses is false.

Additionally, in 2001, the customers were advised to invest in Treasury STRIPS in their IRA to provide balance to their equity holdings in their taxable account. The customers’ assertion that an investment in Treasury STRIPS in an IRA is unsuitable is false.

G.R., in her written submission, supported Claimant’s request for expungement.

Occurrence Number 1146146:

The customer was an experienced investor and, according to Claimant’s recollection, the customer’s account never held any stocks recommended by the analyst formerly employed by Respondent who, in 2003, was charged with civil

securities fraud by the Securities and Exchange Commission due to his stock assessments. Aside from making the statement that the investments in his account were unsuitable due to a conflict of interest with Respondent's Banking Division, there is no evidence providing a direct linkage between the analyst's conduct and any of the holdings in the customer's account.

The statement that the investments in his account were unsuitable due to a conflict of interest with Respondent's Banking Division is unproven and false.

Furthermore, the customer's account was a non-discretionary, commission-based brokerage account. As such, Claimant's role, as a traditional broker, was to provide advice, but she did not act with discretion in the account. Claimant held frequent conversations with the customer over the course of their business relationship. Claimant denied that she was negligent in administering his account.

The statement that Claimant was negligent in managing the customer's accounts is unproven 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

**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

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 9, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 2, 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

Robert J. Gregory

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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

Robert J. Gregory

Robert J. Gregory
Sole Public Arbitrator

03/08/2021

Signature Date

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March 08, 2021

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