

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Tim David Hakes

Case Number: 20-02420

vs.

Respondent
The O.N. Equity Sales Company

Hearing Site: Kansas City, Missouri

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 Tim David Hakes: Daniel D'Costa, Esq., D'Costa Law, P.C., Hicksville, New York.

For Respondent The O.N. Equity Sales Company: Mark E. Elsener, Esq., Ohio National Financial Services, Inc., Cincinnati, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: July 29, 2020.

Tim David Hakes signed the Submission Agreement: July 14, 2020.

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

The O.N. Equity Sales Company signed the Submission Agreement: October 19, 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.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1092133 (“Customer A”), 1117617 (“Customer B”), and 1497770 (“Customer C”); compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems

just and equitable.

In the Statement of Answer, Respondent requested: a statement adjudicating Claimant's prayer for expungement in conformity with Rules 2080(b)(1) and 12805; an order denying Claimant's demand for \$1.00 in compensatory damages or any other relief against Respondent; and an order that all forum fees or other costs be assessed solely against Claimant pursuant to Rule 12805(d).

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 13, 2021, Claimant filed an Affidavit confirming that the Customers were 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 22, 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 occurrences in the CRD.

The Arbitrator did not review any settlement documentation related to Occurrence Number 1497770. Claimant testified that he never possessed the settlement documentation, and Claimant also testified that Respondent informed him that they have no settlement documentation on file. The Arbitrator reviewed Claimant's BrokerCheck Report, which noted that Claimant did not contribute to the settlement amount. Additionally, Claimant testified 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. The Arbitrator determined that expungement of Occurrence Number 1497770 is warranted, despite not having reviewed the settlement documentation.

The Arbitrator noted that the disputes related to Occurrence Numbers 1092133 and 1117617 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: the exhibits admitted into evidence and Claimant's BrokerCheck® Report.

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 1092133, 1117617, and 1497770 from registration records maintained by the CRD for Claimant Tim David Hakes (CRD Number 2399374) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tim David Hakes 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:

Occurrence Number 1092133:

The Arbitrator recommends expungement of Occurrence Number 1092133 pursuant to Rule 2080(b)(1)(C). The Arbitrator finds that the claim, allegation or information is false. Customer A transferred funds to an annuity with Respondent because he was unhappy with the performance of his previous investment. During Customer A’s ownership of the annuity, the market took a downturn and the value of his investments declined. It was at this time Customer A submitted a complaint regarding the way the account was being handled and the decline in value. At the time Customer A established the account, he expressed a desire for increased growth and indicated he had a high tolerance for risk. Customer A was informed of the performance of his investments throughout the period he owned them and had multiple conversations with Claimant regarding his investments. After Respondent responded to Customer A’s complaints, and Respondent reassigned his account, Customer A made no further complaints and continued to invest with Respondent.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1092133 because Rule 2080(b)(1)(C) has been satisfied.

Occurrence Number 1117617:

The Arbitrator recommends expungement of Occurrence Number 1117617 pursuant to Rule 2080(b)(1)(C). The Arbitrator finds that the claim, allegation or information is false. Customer B transferred her accounts to Respondent after hearing a presentation by Claimant. Customer B made it very clear that she desired growth. Customer B’s initial risk tolerance profile suggested that she should be invested in assets with a 6% to 8% return. Given that Customer B had previously insisted that she wanted a 10% return, she said she would change her risk tolerance score to a higher number in order to achieve the higher return. Customer B was also instrumental in investing money on behalf of her parents. The funds invested on behalf of Customer B’s parents were not funds that her parents needed, but rather were intended as inheritance for Customer B and her siblings. Customer B made it

very clear that growth was the highest priority when investing her parent's funds in order to maximize the amount of inheritance upon death of her parents. Claimant communicated with Customer B regularly and received her approval for every investment because both accounts were non-discretionary. Customer B did not respond to Respondent's letter rejecting her complaint. Even after Customer B made her complaint, she remained invested in growth portfolios and rejected attempts to discuss reallocation of her investments.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1117617 because Rule 2080(b)(1)(C) has been satisfied.

Occurrence Number 1497770 (Case Number 10-00207):

The Arbitrator recommends expungement of Occurrence Number 1497770 pursuant to Rule 2080(b)(1)(C). The Arbitrator finds that the claim, allegation or information is false. Customer C alleged that Claimant failed to exercise stop orders on three stocks held by Customer C. These orders were "good until cancelled" which, despite the name, must be renewed every ninety (90) days. Customer C was aware of this requirement, having renewed the orders in the past. The stop orders had not been renewed at the time of the occurrence resulting in Customer C's complaint. Customer C did not move his funds, although they were reassigned, and his account eventually recovered all of the losses which were the subject of his complaint. This case was settled for a nominal sum, which represented Respondent's anticipated cost to defend the case. The Arbitrator could not review the settlement documentation, because neither Claimant nor Respondent possessed a copy. Claimant testified that he did not contribute to the settlement amount.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1497770 because Rule 2080(b)(1)(C) has been satisfied.

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 events giving rise to the disputes. Accordingly, as a party, Respondent 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:

January 8, 2021, postponement requested by Claimant	= \$	WAIVED
March 3, 2021, postponement requested by Parties	= \$	WAIVED
March 17, 2021, postponement requested by Parties	= \$	WAIVED
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Total Postponement Fees	= \$	WAIVED

The Arbitrator has waived the total postponement fees.

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:

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

January 8, 2021, cancellation requested by Claimant	= \$	600.00
March 3, 2021, cancellation requested by Parties	= \$	WAIVED
March 17, 2021, cancellation requested by Parties	= \$	600.00

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Total Last-Minute Cancellation Fees	= \$	1,200.00

The Arbitrator has assessed \$1,200.00 of the last-minute cancellation fees to Claimant.

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$	100.00
Pre-Hearing Conferences: November 24, 2020	1 session	
January 8, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 22, 2021	1 session	

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Total Hearing Session Fees	= \$	150.00

The Arbitrator has assessed \$125.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Brett Coonrod

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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

Brett Coonrod

Brett Coonrod
Sole Public Arbitrator

05/03/2021

Signature Date

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May 04, 2021

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