

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

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In the Matter of the Arbitration Between:

Claimant  
Michael Martin Higgins

Case Number: 20-02438

vs.

Respondent  
Scott & Stringfellow, LLC

Hearing Site: Richmond, Virginia

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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 Michael Martin Higgins: Zachary Morse, Benjamin Winograd, and Docthor Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Scott & Stringfellow, LLC: Christina M. Hill, Esq., Murphy & McGonigle, P.C., Washington, District of Columbia.

**CASE INFORMATION**

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

Michael Martin Higgins signed the Submission Agreement: July 29, 2020.

Statement of Answer filed by Respondent on or about: September 18, 2020.

Scott & Stringfellow, LLC signed the Submission Agreement: September 16, 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 1308522 pursuant to FINRA Rules 2080(b)(1)(A) and (C); deletion of all Disclosure Reporting Pages

accompanying the underlying claim, Customer dispute Occurrence Number 1308522, in their entirety; 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 denied that it is liable for compensatory damages in any amount, and, pursuant to FINRA Rule 12805(d), Respondent requests that any and all forum fees for this matter be assessed against Claimant.

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 May 10, 2021, Claimant advised that the customer in Occurrence Number 1308522 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing. On May 17, 2021, Claimant filed an Affidavit confirming that the 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 June 15, 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.

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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1308522, 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: the Customer’s Statement of Claim; the settlement agreement; Claimant’s BrokerCheck® Report; Affidavit of Service on the Customer; and Claimant’s Statement of Claim.

### **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 1308522 from registration records maintained by the CRD for Claimant Michael Martin Higgins (CRD Number 2338467) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael Martin Higgins 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:

At the hearing, the only witness was Claimant. Claimant testified that his relationship with the Customer began in 1999. The Customer’s investment objective was long-term growth with growth-oriented risk. The Customer’s account was to hold individual stock. Based on the Customer’s investment objective, Claimant recommended several stocks, one of which was Microsoft, which the Customer purchased in 1999. Claimant testified that he advised the Customer before the customer purchased the Microsoft stock of the risks of holding stock. In the year 2000, technology stocks, like Microsoft, took a steep decline. At the time of the decline, Claimant advised the Customer to sell the Microsoft stock, which the Customer declined to do. On June 6, 2006, over six (6) years after purchasing Microsoft stock, the Customer filed a Statement of Claim with the NASD, Case No. 06-02595, against Respondent. The Customer’s complaint alleged monetary damages and asserted that the investments of the Customer were improper based on the Customer’s age and investment objective. In 2007, Respondent settled with the Customer for less than half of the damages sought.

The Arbitrator also reviewed the settlement documentation related to NASD Case No. 06-02595, considered the amount of payment made to the Customer 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.

The Arbitrator found Claimant to be truthful. The weight of the evidence presented demonstrated that the Customer was eager to hold technology stocks. When advised to sell the Microsoft stock, the Customer refused, then five (5) years later alleged that ownership of the Microsoft stock was unsuitable. As no one can predict the future, the suitability of the Microsoft stock must be looked at during the time of purchase, not at a date a year or more later. At the time of Claimant’s recommendation, Claimant had a reasonable basis to recommend Microsoft stock, and the Customer wanted to hold technology stocks. Based on the testimony presented, as well as the exhibits introduced at the hearing, the Arbitrator finds that the Customer’s version of events, set forth in the Customer’s Statement of Claim, are not credible and clearly erroneous. For the foregoing reasons, the Arbitrator recommends expungement of Occurrence Number 1308522 from Claimant’s record.

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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent 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 Conferences: December 23, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: June 15, 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**

Joseph J. Dougherty

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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**

***Joseph J. Dougherty***

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Joseph J. Dougherty  
Sole Public Arbitrator

**07/01/2021**

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Signature Date

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July 01, 2021

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