

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Brian Schiller

Case Number: 20-02448

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: New York, New York

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Brian Schiller: Amy B. Bard, Esq., Law Offices of Amy Bard, Glen Ridge, New Jersey.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. (“MLPFS”): Kathryn D. Perreault, Esq. and Sarah K. Yates, Esq., Bressler Amery Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: July 30, 2020.
Brian Schiller signed the Submission Agreement: July 27, 2020.

Statement of Answer filed by Respondent on or about: September 21, 2020.
MLPFS signed the Submission Agreement: September 21, 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 1515338 and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent did not delineate a specific relief request, but stated that Claimant's request for compensatory damages in the amount of \$1.00 was unfounded.

At the outset of 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 19, 2021, Claimant advised that the customer in Occurrence Number 1515338 ("Customer") was served with the Statement of Claim and with notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, videoconference hearing on January 25, 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 take a 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 global settlement documents between Respondent and the SEC, considered the amount of payments made to any party to that settlement, and considered other relevant terms and conditions of that 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 also reviewed Respondent's letter dated January 19, 2021, indicating that after a reasonable search of files, no settlement agreement for this matter could be located. Accordingly, the Arbitrator noted that due to the global nature of the settlement, there were no settlement documents specific to Claimant and the Customer to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Customer's account documentation; an SEC Notice; and Claimant's service records.

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 1515338 from registration records maintained by the CRD for Claimant Brian Schiller (CRD Number 4035624) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Schiller 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; and,

The claim, allegation, or information is false.

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

The Customer became a client of Claimant’s in 2005. A high-net-worth individual, the Customer was looking to diversify his \$5,000,000.00 portfolio away from his concentrated equity position in his company’s stock. Claimant recommended, and the Customer eventually purchased, \$200,000.00 of a AAA-rated New York State bond with a fixed interest rate for five (5) years, after which it would convert into an auction rate security (“ARS”). Claimant ceased being the Customer’s representative in 2006.

Historically, the ARS municipal market was considered to be essentially a cash equivalent. In 2008, however, the market was under strain and auctions for this type of paper began to fail. In August of 2008, the SEC’s Enforcement Division reached a preliminary settlement with Respondent (and other firms) pursuant to which Respondent would be obliged to purchase customers’ ARS interests at par. It subsequently did so with the Customer. Claimant was not a party to this arrangement and did not contribute to it. There was nothing in the settlement announcement concerning likely expungement claims.

By reason of the forgoing, the undersigned finds the claim to be clearly erroneous and or false and merits expungement. The bond, when purchased, was entirely suitable for the Customer, and the subsequent failure of ARS auctions due to Respondent’s unwillingness to support them with attendant liquidity concerns did not involve any conduct or failure on the part of Claimant. Claimant also testified as to the adverse effects this single disclosure has had on his business development efforts.

The interests of the investing public being in no way negatively implicated, the undersigned recommends that this Occurrence be expunged from Claimant’s record pursuant to Rules 2080(b)(1)(A) and (C) on the ground that it is clearly erroneous, factually impossible, and/or false.

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 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 23, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session =\$ 50.00
Hearing Date: January 25, 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 E. Anderson

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature

Robert E. Anderson

Robert E. Anderson
Sole Public Arbitrator

01/29/2021

Signature Date

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January 29, 2021

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