

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Steven Kent Quinly

Case Number: 20-02456

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: San Francisco, California

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 Steven Kent Quinly (“Claimant”): Robert L. Gonser, Esq., Gonser Law PC, Lafayette, California.

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: August 4, 2020.
Claimant signed the Submission Agreement: August 4, 2020.

Statement of Answer filed by Respondent on or about: September 23, 2020.
Respondent signed the Submission Agreement: September 24, 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:

1. Expungement of Occurrence Number 1884103 from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Number 1884103 from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation or information is false; and
3. Compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent objected to Claimant's request for 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 January 27, 2021 Claimant filed an Affidavit signed by Claimant's counsel advising that the customer in Occurrence Number 1884103 ("Customer") was served with the Statement of Claim and the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on February 3, 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 oppose 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 has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation, 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 request for expungement and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and Claimant's Exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 the above-captioned arbitration (Occurrence Number 1884103) from registration records maintained by the CRD for Claimant Steven Kent Quinly (CRD Number 703012) with the understanding that, pursuant to Notice to Members 04-16, Claimant Steven Kent Quinly 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:

The Customer's complaint stems from an unsuccessful investment in a note linked to Peabody Energy. In an email to Respondent dated April 29, 2016, the Customer claimed that the investment was unsuitable, and that Claimant failed to advise him of the risks associated with the investment and failed to inform him that the investment was losing value.

At the hearing, Claimant testified that he had regular, extensive and detailed discussions with the Customer regarding the nature of the investment and, that the disputed investment was part of an ongoing strategy based on a series of similar investments and was in fact, a reinvestment of funds freed up after the close of a prior, similar investment. Claimant also testified that the Customer was provided with disclosure documents, trade confirmations, and account statements informing him of the nature and performance of the investment.

The Arbitrator finds the Customer's claims to be false. The investment was made as part of a series of investments based on the informed consent of the Customer. As per Claimant's testimony, the prior investments were successful and the simple fact that this one investment was unsuccessful does not render it unsuitable. Claimant's uncontested testimony belies the Customer's claim that he was not advised of the risk and the performance of the investment.

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 Conference: December 3, 2020 1 session		
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: February 3, 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

Peter H. Daly

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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

Peter H. Daly

Peter H. Daly
Sole Public Arbitrator

02/16/2021

Signature Date

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February 17, 2021

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