

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Thomas Harold Clark

Case Number: 20-02460

vs.

Respondents
E.F. Hutton & Company, Inc.
Lehman Brothers Inc.

Hearing Site: Washington, D.C.

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. Members

REPRESENTATION OF PARTIES

For Claimant Thomas Harold Clark: Dochter Kennedy, Esq. and Frances Menzer, Esq., Advisor Law LLC, Westminster, Colorado.

Respondent E.F. Hutton & Company, Inc. did not enter an appearance in this matter.

Respondent Lehman Brothers Inc. did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: July 31, 2020.

Thomas Harold Clark signed the Submission Agreement: July 31, 2020.

E.F. Hutton & Company, Inc. did not file a Statement of Answer or sign the Submission Agreement.

Lehman Brothers Inc. did not file a Statement of Answer or sign the Submission Agreement.

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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 54880, 54882 and 54883; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

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.

Respondents E.F. Hutton & Company, Inc. and Lehman Brothers Inc. did not file Statements of Answer or properly executed Submission Agreement but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and are bound by the determination of the Arbitrator on all issues submitted.

On September 19, 2008, Respondent Lehman Brothers Inc. filed for bankruptcy under the United States Bankruptcy Code. This matter proceeded pursuant to the Bankruptcy Court Stipulation and Order dated July 30, 2020, pursuant to Section 362 of the Bankruptcy Code, modifying the automatic stay for the limited purpose of permitting former brokers to pursue Financial Industry Regulatory Authority (FINRA) arbitrations naming Lehman Brothers Inc. as a nominal Respondent and to seek damages against Lehman Brother Inc. in the capped amount of no more than \$1.00 per arbitration claim.

On January 7, 2021, Claimant advised that the surviving customers in Occurrence Numbers 54880 and 54882 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Claimant provided FINRA Dispute Resolution Services with an Affidavit dated January 12, 2021, stating that Claimant was unable to serve the Statement of Claim and the notice of expungement hearing on some of the customers related to Occurrence Numbers 54880 and 54882 since the customers are deceased. The deceased customers were therefore not provided a copy of the Statement of Claim and did not participate in the expungement hearing.

On January 12, 2021, Claimant filed an Affidavit confirming that the surviving customers related to Occurrence Numbers 54880 and 54882 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Claimant provided FINRA Dispute Resolution Services with an Affidavit dated January 12, 2021 stating that Claimant was unable to serve the Statement of Claim and the notice of expungement hearing on the customer related to Occurrence Number 54883 since the customer is deceased. The customer was therefore not provided a copy of the Statement of Claim and did not participate in the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on March 11, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents E.F. Hutton & Company, Inc. and Lehman Brothers Inc. did not participate in the expungement hearing.

The surviving customers related to Occurrence Numbers 54880 and 54882 did not participate in the expungement hearing. The Arbitrator found that the surviving 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 was unable to review the settlement documentation related to Occurrence Numbers 54880, 54882 and 54883 due to length of time since the settlements were entered and the Respondents are now defunct and non-responsive. The Arbitrator considered the amount of payment made to any party to the settlements. Based on Claimant's testimony, the Arbitrator noted that the settlements were not conditioned on the customers to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's testimony; Claimant's BrokerCheck® Report; and the exhibits.

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 54880 from registration records maintained by the CRD for Claimant Thomas Harold Clark (CRD Number 850487) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Harold Clark 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:

These customers joined together upon the encouragement of one of the Customers to complain about a commodity fund investment that declined in value. The fund was professionally managed by a third-party. Each of these customers had substantial

liquidity, income and overall net worth, and were seeking an aggressive investment for a minor portion of their overall portfolio and to take advantage of the growth in the commodity market at the time. These customers invested between 2%-10% of their liquid net worth in this commodity investment and it was a suitable recommendation given each customer's overall financial circumstances and investment objectives. Claimant discussed the details of the investment and the management of the fund with each customer, specifically the fact that it would be actively traded, and each signed multiply documents. Each customer received trade confirmations for each transaction made. Claimant had no involvement in the trading within the accounts and had no authority to direct trades. Each customer experienced substantial gains before the losses and each was made aware of the risks of loss when they invested in the account.

Claimant did not cause the account losses or churning. In fact, he sought information from his supervisor to confirm that the level of trading in the accounts were appropriate, even though he did not manage the accounts. While the settlement amount in the settlement of this complaint was not small, Claimant did not contribute to the settlement. The complaint was settled to avoid the cost of litigation.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 54882 from registration records maintained by the CRD for Claimant Thomas Harold Clark (CRD Number 850487) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Harold Clark 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;
the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and
the claim, allegation, or information is false.

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

Claimant had only preliminary meetings with the customers before learning that the customers had investment needs that exceeded the experience Claimant had at the time. Claimant referred the customers to an option trading expert within Respondent E.F. Hutton & Company, Inc. at the time. As a result of the referral, Claimant made a small amount of commission on the account for what Claimant recalls being about a year or so. Claimant had no involvement in or knowledge of the trading within the customers' account and offered no investment advice or investment recommendations to the customers. The customers worked solely with the trading expert and Claimant believes he was only implicated in the complaint based upon the initial referral and commission sharing. Claimant has no personal knowledge of the other two individuals involved in the customers' complaint and has never met with or spoken to them. Claimant had no

involvement in the complaint or the resolution thereof. Although the settlement amount in this dispute was not small, Claimant did not financially contribute to the settlement.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 54883 from registration records maintained by the CRD for Claimant Thomas Harold Clark (CRD Number 850487) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Harold Clark 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; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

The customer was a client of Claimant’s ex-wife and partner at the time. Claimant was not involved in the management or oversight of the customer’s account and never gave him investment advice or recommendations. Specifically, Claimant had no involvement in the recommendation of the limited partnership investment at issues in the customer’s complaint, whether directly or indirectly. Claimant believes that he was included in the complaint because his name was well-known in connection with the firm. Claimant had no involvement in the resolution of the complaint. Although the settlement amount in the case was not small, Claimant did not contribute financially to the settlement.

4. 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents E.F. Hutton & Company, Inc. and Lehman Brothers Inc. are each 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 14, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session =\$ 50.00
Hearing: March 11, 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

Kelli J. Jareaux

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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

Kelli J. Jareaux

Kelli J. Jareaux
Sole Public Arbitrator

03/25/2021

Signature Date

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.

March 25, 2021

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