

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

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In the Matter of the Arbitration Between:

Claimant

David Hershel Weinstein

Case Number: 20-02464

vs.

Respondent

Dawson James Securities, Inc.

Hearing Site: Boca Raton, Florida

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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 David Hershel Weinstein: Jennifer P. Farrar, Esq., Farrar Law, PLLC, Tomball, Texas.

For Respondent Dawson James Securities, Inc.: Gregg J. Breitbart, Esq. and Kevin D. Tragesser, Esq., Kaufman Dolowich & Voluck, LLP, Fort Lauderdale, Florida.

**CASE INFORMATION**

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

David Hershel Weinstein signed the Submission Agreement: June 30, 2020.

Statement of Answer filed by Respondent on or about: August 28, 2020.

Dawson James Securities, Inc. signed the Submission Agreement: August 28, 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 did not oppose Claimant’s expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1561105 (“Customers A”) and 1956541 (“Customer B”) pursuant to FINRA Rules 2080(b)(1)(A), (B), and (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 opposed Claimant’s request for \$1.00 in compensatory damages and denies any liability to Claimant whatsoever; and Respondent requests that all forum fees be assessed against Claimant, in accordance with FINRA Rules.

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 June 8, 2021 and June 11, 2021, Claimant advised that the customers in Occurrence Numbers 1561105 and 1956541 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 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, did not oppose the request for expungement.

The Customers 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 also reviewed the settlement documentation related to Occurrence Numbers 1561105 and 1956541, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party 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: all pleadings; testimony and evidence at the hearing; and the post-hearing brief.

## 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 1561105 and 1956541 from registration records maintained by the CRD for Claimant David Hershel Weinstein (CRD Number 1370869) with the understanding that, pursuant to Notice to Members 04-16, Claimant David Hershel Weinstein 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

Background:

Claimant has been working in the securities industry for thirty-five (35) years. Claimant is a registered securities dealer. For the last several years, Claimant has been working for Respondent as an Investment Banker (raising capital for corporations and other entities and may also provide ancillary services to them such as marketing). Additionally, Claimant has kept a few financial clients. Customers A consists of various customers.

Occurrence Number 1561105 (Case Number 11-00545):

As an Investment Banker, Claimant worked closely with Neptune raising capital and providing several ancillary services. He was not involved with them in any way as a Financial Advisor offering financial advice to prospective clients. Claimant never met any of Customers A or had any type of interaction with them. It was another broker who provided investment advice services to Customers A and made the recommendations and sale of the securities.

The investment in this occurrence was a “Unit” offered by Neptune consisting of two parts: (1) a “convertible note” that investors could convert into shares of Neptune common stock, along with twenty-four percent (24%) per annum return payable in additional shares of Neptune common stock; and (2) warrants to purchase shares of Neptune common stock at a stated exercise price. This investment was neither conservative nor risk-free. The investment offered the following warning:

The units offered hereby are speculative. Investment in the units involves a high degree of risk and are suitable only for investors who have substantial net worth and liquidity. See "Risk Factors." Investors must be prepared to bear the economic risk of the investment for an indefinite period of time and be able to withstand a total loss of the investment.

Due to this, the investment was offered only to "accredited investors" (an individual is deemed an "accredited investor" if he or she individually, or jointly with a spouse, has a net worth of at least \$1 million). Each of Customers A represented to Respondent that they were "accredited investors" and the investment they made in the security was suitable for them. Each of Customers A were given the proper investment related documentation, which they acknowledged they understood and signed. Each of Customers A's investment objections were listed as "Speculation" and their risk tolerance as "high/aggressive". Each of Customers A were experienced investors. There is no evidence to support a conclusion that the investment was unsuitable for any of Customers A; all evidence points to the contrary.

The arbitration claim did not name Claimant. However, it alleged that he acted unfairly and unethically in an attempt to keep the firm's clients invested in a particular issue. Claimant and Respondent deny any wrongdoing and felt the allegations were not justifiable. Respondent, as a business decision, elected to settle the matter for a nominal amount as opposed to pursuing it in arbitration or court. Claimant did not participate, nor contribute, to the settlement, and the settlement was not contingent on not opposing expungement. Customers A were notified of the expungement request and were invited to participate in the hearing if they desired. None of Customers A chose to participate or contest the expungement request. Claimant had not previously requested expungement of this matter.

All the above facts, including that Claimant had no involvement with Customers A's accounts, investment decisions, or supervision of Customers A's investment advisor, determines that expungement of Occurrence Number 1561105 is warranted under FINRA Rule 2080(b)(1)(B): "The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds." The Arbitrator recommends the expungement of Occurrence Number 1561105.

The expungement will correct the integrity of Claimant's CRD Record and BrokerCheck Report, which currently reflects that Claimant acted improperly regarding Customers A and their investments and tarnishes Claimant's reputation. There is no benefit to the investing public that outweighs the harm to Claimant's reputation through the continued disclosure of the Occurrence.

The Arbitrator has reached this decision after considering all pleadings, the post-hearing brief, and the testimony and evidence presented at the hearing.

Occurrence Number 1956541 (Case Number 17-02569):

In addition to Claimant's work for Respondent as an Investment Banker, Claimant has also kept a few financial clients of his own. Customer B, who was the owner of a production company, was one of the few.

Customer B, a wealthy retired film producer was a savvy and sophisticated investor. His production company was the corporate entity through which he conducted business. Customer B was always an active participant, conducting his own research and designing his investment strategies and decisions for the account. Customer B represented that his investment objective for his production company was speculation, and that he was willing to tolerate very high-risk investments in hopes of obtaining above average results.

Customer B and Claimant communicated frequently. In accordance with the information provided by Customer B, Claimant brought certain investment opportunities to his attention. Claimant had reasonable grounds for believing that those recommendations were suitable, based on the facts disclosed and confirmed by Customer B, and it was Customer B who made the decisions whether and how much to invest in any particular investment and which ones to reject.

When the investments declined in value, Customer B chose not to sell the subject investments at a time that would have substantially limited his losses. Unfortunately, these investment decisions ultimately failed to yield the desired results.

Through the years, Customer B and Claimant developed a personal friendship. At some point, Customer B went through a rough financial period and he confided in Claimant that he could not continue investing and needed to recoup some of his losses. Customer B then engaged an attorney and filed for arbitration, claiming unsuitable recommendations, over-concentration, and failure to mitigate damages. The claim does not name Claimant. Respondent, as a business decision, settled with Customer B for an amount that approximated the defense costs to proceed through arbitration. Customer B was present during the settlement negotiations but did not participate in them and did not make any contributions towards the settlement. The settlement was not contingent on not opposing expungement.

The allegations made by Customer B against Claimant are false. Customer B made all investment decisions and understood the risks that came with speculative investments looking for greater potential results. These allegations on Claimant's CRD Record and BrokerCheck Report harms Claimant's reputation by misinforming the public of his conduct towards Customer B' account. The disclosure makes the record inaccurate and conveys the false impression that Claimant acted improperly with respect to Customer B's account. There is no benefit to the investing public that outweighs the harm to Claimant's reputation through the continued disclosure of the Occurrence. Claimant has not previously requested expungement of this incident. For all of these reasons, Claimant is entitled to have this incident expunged from his CRD Record under FINRA Rule 2080(b)(1)(C): "The claim, allegation, or information is false."

After considering the pleadings, the testimony, and the evidence at the hearing, the Arbitrator recommends Expungement of Occurrence Number 1956541 because FINRA Rule Rule2080(b)(1)(C) has been satisfied.

Claimant's claims for monetary relief against Respondent were withdrawn.

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 dispute. 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 28, 2021, postponement requested by Claimant	=\$	WAIVED
March 29, 2021, postponement requested by Claimant	=\$	50.00

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Total Postponement Fees	=\$	50.00
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The Arbitrator has assessed the total postponement fees to Claimant.

### Last-Minute Cancellation Fees

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

January 28, 2021, cancellation requested by Claimant	=\$	WAIVED
March 29, 2021, cancellation requested by Claimant	=\$	600.00

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Total Last-Minute Cancellation Fees	=\$	600.00
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The Arbitrator has assessed the total 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:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session	=\$	50.00
Pre-Hearing Conference: December 1, 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
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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**

Elena G. Rodriguez

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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**

***Elena G. Rodriguez***

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Elena G. Rodriguez  
Sole Public Arbitrator

**07/01/2021**

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Signature Date

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July 02, 2021

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