

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Martin Donald Shafiroff

Case Number: 20-02467

vs.

Respondent
Lehman Brothers 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

REPRESENTATION OF PARTIES

For Claimant Martin Donald Shafiroff: Dochter Kennedy, MBA, J.D. and Frances Menzer, Esq., Advisor Law, LLC, Westminster, Colorado.

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

CASE INFORMATION

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

Martin Donald Shafiroff signed the Submission Agreement: July 31, 2020.

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 Number 285267; 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.

Respondent Lehman Brothers Inc. did not file a Statement of Answer or properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is 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.

Claimant provided FINRA Office of Dispute Resolution with an Affidavit dated March 8, 2021, stating that Claimant was unable to serve the Statement of Claim and the notice of expungement on the customer related to Occurrence Number 285267 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 April 13, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement 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 noted that the dispute related to Occurrence Number 285267 was not settled and, therefore, there was no settlement document to review.

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, 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 285267 from registration records maintained by the CRD for Claimant Martin Donald Shafiroff (CRD Number 419623) with the understanding that, pursuant to Notice to Members

04-16, Claimant Martin Donald Shafiroff 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:

According to Claimant’s BrokerCheck® Report, while employed by Respondent Lehman Brothers Inc. (“LBI”), the following allegation was made against him: “customer alleged he was misled with respect to initial public offering of securities”. Based on the record, it appears that the customer dispute concerns the initial public offering (IPO) of Enterprise Products, described in the Statement of Claim (Para. 4) as a natural gas and crude oil pipeline company. Claimant’s BrokerCheck® Report states that the customer complaint was received on August 31, 1998 and was denied by the Respondent firm.

Claimant testified that he has been in the financial services industry since 1966 and is currently registered with another brokerage firm. After a 55-year career in the financial services industry, Claimant has one customer dispute disclosure on the “Disclosure Event” section of his BrokerCheck® Report. Claimant seeks expungement of that single disclosure.

Claimant testified that the customer was an expert in the chemical industry who bought and sold chemical companies. He testified that the customer was “very experienced” and “very sophisticated.” He also testified that the customer was “very successful financially” and a “purported billionaire.” Claimant testified that the customer was interested in “wealth” and was “willing to speculate”.

At the hearing Claimant credibly testified that he sent the customer a preliminary prospectus for the Enterprise Products IPO (“Enterprise”). He explained that at the time, Enterprise, which had “chemical aspects,” was one of the biggest master limited partnerships in the industry and that Respondent was the lead underwriter. Claimant testified that he did not mislead the customer. Claimant testified that, instead “he went out of his way” to introduce the customer to the CEO of Enterprise who, according to Claimant’s testimony is also now deceased. In this regard, Claimant arranged for a personal conversation by phone between the customer and Enterprise’s CEO. According to Claimant, during this phone call they discussed the “opportunities and risks” presented by the IPO and the disclosure materials contained in the prospectus. Following this phone call, the customer gave Claimant the order to purchase “a couple of hundred thousand dollars” of Enterprise. Claimant testified that this amount represented a small fraction of the customer’s portfolio and of his high net worth. Claimant volunteered that he too invested in Enterprise.

There came a time when the stock price of Enterprise declined and the shares sold-off in price, approximately 4 or 5 points, according to Claimant. Claimant testified that the customer called him to convey his dissatisfaction with the decline of the Enterprise stock. Specifically, Claimant testified that the customer said that he was “not prepared to take this loss” and wanted Claimant and Respondent firm to compensate him. Claimant referred the customer to the Respondent firm’s legal department, which ultimately denied the customer’s request for compensation following investigation. The customer did not pursue the dispute further.

Claimant testified that he does not know what happened after the Respondent firm’s denial of the customer’s complaint; he testified that he had “no desire” to communicate with the customer following the allegation made against him. Claimant testified that eventually the Enterprise stock went up. Enterprise was ranked number 105 of the 2018 Fortune 500 list.

The Arbitrator finds that the allegation against Claimant is clearly erroneous and false. There is no evidence that Claimant misled his customer regarding the Enterprise IPO. Claimant’s credible testimony establishes that he provided his customer with written disclosure materials in the form of the preliminary prospectus as well as afforded him an opportunity to speak directly with Enterprise’s CEO about the opportunities and risks presented by the IPO, which the customer did. Reliance is also placed on the fact that Claimant has a single disclosure on his BrokerCheck® Report after 55 years in the financial services industry. Furthermore, reliance is placed on Respondent’s denial of the claim, which occurred around the time the complaint was brought and the result of Respondent’s investigation. Finally, that the customer did not pursue his complaint further is also telling. As such, the Arbitrator finds that the allegation on Claimant’s BrokerCheck® Report is clearly erroneous and false. This customer dispute information has no meaningful investor protection or regulatory value. Under these circumstances and in equity and fairness, the Arbitrator recommends the expungement of this customer dispute information from Claimant’s Central Registration Depository (CRD) 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 |
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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 event giving rise to the dispute. Accordingly, as a party, Respondent Lehman Brothers Inc. 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 14, 2020 1 session

= \$ 50.00

One (1) hearing session on expungement request @ \$50.00/session
Hearing: April 13, 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

Annamaria Boccia Smith

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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

Annamaria Boccia Smith

Annamaria Boccia Smith
Sole Public Arbitrator

04/15/2021

Signature Date

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April 15, 2021

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