

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard G. Michalski

Case Number: 20-02483

vs.

Respondent
Casimir Capital L.P.

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 Richard G. Michalski: Michael Ference, Esq., Sichenzia Ross Ference LLP, New York, New York.

For Respondent Casimir Capital L.P.: William Poon, Casimir Capital L.P., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 3, 2020.

Richard G. Michalski signed the Submission Agreement: August 3, 2020.

Statement of Answer filed by Respondent on or about: October 22, 2020.

Casimir Capital L.P. signed the Submission Agreement June 7, 2021.

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 1435632 and 1357988; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent opposed Claimant's request for \$1.00 in compensatory damages.

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 May 26, 2021, Claimant advised that the customers in Occurrence Numbers 1435632 and 1357988 ("customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on June 2, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The customers relating to Occurrence Number 1435632 participated in the expungement hearing and opposed the expungement request. The customer relating to Occurrence Number 1357988 also did not participate in the expungement hearing. The Arbitrator found that the customer relating to Occurrence Number 1357988 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 noted that the dispute related to Occurrence Number 1357988 was not settled and, therefore, there was no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings, exhibits, Claimant's testimony, customers' testimony relating to Occurrence Number 1435632, and the Claimant's BrokerCheck® Report.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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. Claimant's request for expungement of Occurrence Number 1435632 from his registration records maintained by the CRD is denied.

ARBITRATOR'S EXPLANATION OF DECISION

The Claimant testified that the customers in Occurrence Number 1435632 were not his clients, he did not service their accounts, and they did not follow him when he left the employ of the Respondent to work at another broker/dealer. The Claimant further alleged that other persons at the Respondent were responsible for the customers after his departure, and he testified as to his belief that the Respondent's motivation in making this report was to shift blame to a departed employee. However, the customers disputed the Claimant's version of events. Most tellingly, the customers averred that they were in frequent communication with the Claimant regarding their accounts, and that he was their principal point of contact while they held accounts at the Respondent. Indeed, while the customers clearly recollected significant contact with the Claimant, they could not recall the names of others at the Respondent that they might have interacted with. Therefore, with the testimony of the Claimant and the testimony of the customers in direct conflict, there is a genuine issue here. In light of this conflicting testimony, it cannot be said that the claim was factually impossible or clearly erroneous. For the same reason, it cannot be concluded that the Claimant was in no way involved in the matters at issue. And lastly, given the differing testimony, it cannot be ruled that the claim was false. For all these reasons, expungement is denied for this Occurrence.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1357988 from registration records maintained by the CRD for Claimant Richard G. Michalski (CRD Number 4588706) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard G. Michalski 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:

In his testimony, Claimant denied knowing the customer or that the customer was his client. Moreover, documentary evidence indicated that the filing of the report was, in the first instance, a clerical error. I found Claimant's testimony to be credible.

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 events giving rise to the dispute. Accordingly, as a party, Respondent Casimir Capital L.P. 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 2, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session =\$ 50.00
Hearing: June 2, 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

Anthony Michael Sabino

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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

Anthony Michael Sabino

Anthony Michael Sabino
Sole Public Arbitrator

06/15/2021

Signature Date

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June 16, 2021

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