

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

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In the Matter of the Arbitration Between:

Claimant  
Christopher Ficara

Case Number: 20-02493

vs.

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: San Diego, California

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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 Christopher Ficara (“Claimant”): Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

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 24, 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 made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1556352 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 1556352 from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1556352;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to 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.

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

### **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 (CRD Number 5132333) request for expungement of Occurrence Number 1556352 from his registration records maintained by the CRD is denied. The Customer's claim was not factually impossible or clearly erroneous. Claimant did not meet his burden of proof to show that the Customer's claim was false.
2. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("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(s) that employed the associated person(s) at the time of the event(s) 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: November 23, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: February 11, 2021 1 session

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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**

Morris S. Getzels

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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**

***Morris S. Getzels***

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Morris S. Getzels  
Sole Public Arbitrator

**03/15/2021**

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Signature Date

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March 15, 2021

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