

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

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In the Matter of the Arbitration Between:

Claimant  
Erik M. Bjerke

Case Number: 20-02509

vs.

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Atlanta, Georgia

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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 Erik M. Bjerke (“Claimant”): Kurt T. Kalberer, II, Esq., Kalberer LLP, New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: August 6, 2020.  
Claimant signed the Submission Agreement: August 5, 2020.

Statement of Answer filed on or about: October 1, 2020.  
Respondent signed the Submission Agreement: October 1, 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 and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1854844, 1305267, 1152593, and 1055702 and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent did not state a request for relief.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On March 12, 2021, Claimant advised that the customers in Occurrence Numbers 1854844, 1305267, 1152593, and 1055702 (collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). On March 17, 2021, Claimant filed copies of the FedEx proof of delivery for the Notices.

On March 16, 2021, Claimant filed a copy of an email from the customer in Occurrence Number 1305267("2021 Email"), expressing support for Claimant.

The Arbitrator conducted a recorded, telephonic hearing on March 17, 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, took no position on 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 1152593 and 1055702, 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.

The Arbitrator noted that the disputes related to Occurrence Numbers 1854844 and 1305267 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: BrokerCheck® Report, settlement agreements for Occurrence Numbers 1152593 and 1055702, Notices, proof of delivery for the Notices, Statement of Claim, Statement of Answer, and Claimant's Exhibits A-E.

### **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:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 1854844, 1305267, 1152593, and 1055702 from registration records maintained by the CRD for Claimant Erik Mathews Bjerke (CRD Number 2998546) with the understanding that, pursuant to Notice to Members 04-16, Claimant Erik Mathews Bjerke 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 false.

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

**Occurrence Number 1854844**

Respondent denied the complaint and presented proof to the customer that he had been given written and oral notice of the contingent redemption fee for the sale of mutual funds held less than one year. The customer did not pursue the complaint and remained a customer of Claimant for several more years.

**Occurrence Number 1305267**

After Respondent and Claimant explained the transaction, the customer admitted that he had not understood the hedge fund’s valuation and had not intended to file a formal complaint. The customer is still Claimant’s client and, in the 2021 Email, stated that he trusts Claimant with his business.

Pursuant to Rule 13805 of the 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:

**Occurrence Number 1152593**

The customer was a moderate-aggressive investor who wanted to invest part of his IRA in technology stocks. Claimant recommended putting a small portion of his IRA (which was in addition to his employer-sponsored retirement account) into technology companies, which were doing very well in the late 1990s. The customer wanted to put more money into technology, but Claimant advised against doing so. In 2000, the market declined substantially – especially the technology sector. The customer then complained to Respondent, but he did not complain to Claimant who advised him to hold on.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

**Occurrence Number 1055702**

In 1998, Claimant was just starting out in the brokerage business. The customers opened an account with another broker, who was Claimant's mentor and allowed him to sit in on meetings with customers. The customers were looking for growth investments. The other broker made all the recommendations. Claimant was not involved in any way with the recommendations or trades with the customers.

**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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee = \$ 150.00

**Postponement Fees**

Postponement granted during these proceedings for which fees were assessed or waived:

February 15, 2021, postponement requested by Claimant WAIVED

**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 @ \$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 17, 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**

James C. Hoover - 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**

***James C. Hoover***

James C. Hoover  
Sole Public Arbitrator

**04/05/2021**

Signature Date

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April 05, 2021

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