

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David L. Bennett

Case Number: 20-02518

vs.

Respondent
Fifth Third Securities, Inc.

Hearing Site: Tampa, Florida

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 L. Bennett (“Claimant”): Elaine M. Rice, Esq. and Kimberly A. Koves, Esq., Guerra King P.A., Tampa, Florida.

For Respondent Fifth Third Securities, Inc. (“Respondent”): Robert M. Zimmerman, Esq. and R. Samuel Gilley, Esq., Dinsmore & Shohl LLP, Cincinnati, Ohio.

CASE INFORMATION

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

Statement of Answer filed on or about: October 21, 2020.
Respondent signed the Submission Agreement: October 26, 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 1422659 and 1438406 and such other relief as the Panel deems just.

In the Statement of Answer, Respondent did not request any relief.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge having read the pleadings and other materials filed by the parties.

On January 15, 2021, Claimant advised that the personal representative for the estate of the customer in Occurrence Number 1422659 and the customer in Occurrence Number 1438406 (collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). On January 29, 2021, Claimant filed copies of the signed certified mail return receipts for the Notices.

The Panel conducted a recorded, telephonic hearing on February 18, 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 Customers did not participate in the expungement hearing. The Panel found that the Customers had notice of the expungement request and hearing.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Panel noted that the disputes related to Occurrence Numbers 1422659 and 1438406 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, Claimant's Affidavit and testimony, and Claimant's BrokerCheck® Report.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to Occurrence Numbers 1422659 and 1438406 from registration records maintained by the CRD for Claimant David Lloyd Bennett (CRD Number 4761782) with the understanding that, pursuant to Notice to Members 04-16, Claimant David Lloyd Bennett 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.

Occurrence Number 1422659:

Pursuant to Rule 13805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

Claimant provided testimony that his investment recommendations to the customer, a trust, (“Trust”) were in accord with the Trust's investment goals as explained to him by the Trust representative. The Panel has reviewed such testimony and finds that the Trust's allegations of unsuitability are clearly erroneous.

Occurrence 1438406:

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

The claim, allegation, or information is false.

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

According to Claimant’s testimony and Affidavit, he was not advising the customer when the customer made the investments that were the subject of the claims against Claimant. Based upon such testimony and the Affidavit, the Panel finds that the customer’s allegations are false.

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 = \$ 1,575.00

**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 = \$ 1,900.00
Member Process Fee = \$ 3,750.00

Hearing Session Fees and Assessments

The Panel 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 @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: December 16, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: February 18, 2021	1 session	
<hr/>		
Total Hearing Session Fees	= \$	2,250.00

The Panel has assessed \$2,250.00 of the hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Thomas J. Patka	-	Public Arbitrator, Presiding Chairperson
Joel F. Martineau	-	Public Arbitrator
Howard B. Scherer	-	Non-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.

Concurring Arbitrators' Signatures

Thomas J. Patka

Thomas J. Patka
Public Arbitrator, Presiding Chairperson

02/26/2021

Signature Date

Joel F. Martineau

Joel F. Martineau
Public Arbitrator

02/26/2021

Signature Date

Howard B. Scherer

Howard B. Scherer
Non-Public Arbitrator

02/26/2021

Signature Date

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.

February 26, 2021

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