

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Melisa Mae Lloyd

Case Number: 20-02525

vs.

Respondents
Cetera Advisors LLC
Investors Capital Corp.

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. Members

REPRESENTATION OF PARTIES

For Claimant Melisa Mae Lloyd: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondents Cetera Advisors LLC (“Cetera”) and Investors Capital Corp. (“ICC”): David Feldstein, Esq., Cetera Advisors LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 6, 2020.

Melisa Mae Lloyd signed the Submission Agreement: August 6, 2020.

Cetera did not file a Statement of Answer and did not sign the Submission Agreement.

Amended Statement of Claim filed on or about: September 30, 2020.

Statement of Answer filed by Respondent ICC on or about: October 13, 2020.

ICC signed the Submission Agreement: October 30, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, 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 ICC did not oppose Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of Occurrence Numbers 1640517 and 1908609, and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer to the Amended Statement of Claim, Respondent ICC requested: a statement from the Chairperson on whether to order the recommendation of expungement of the customer complaints from Claimant's CRD records in the form required by FINRA Rule 2080; the denial of Claimant's request for \$1.00 in compensatory damages; and an assessment of all forum costs and fees against Claimant.

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 Cetera did not file a 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 30, 2020, Claimant filed an Amended Statement of Claim, in which she withdrew any claims against Respondent Cetera and named Respondent ICC as the sole Respondent. Accordingly, the Arbitrator has made no determination with respect to any relief requested against Respondent Cetera.

On February 3, 2021, Claimant advised that the customers in Occurrence Numbers 1640517 ("Customer A") and 1908609 ("Customer B") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on March 3, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent ICC did not participate in the expungement hearing.

Customer A and Customer B did not participate in the expungement hearing. The Arbitrator found that Customer A and Customer B 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 1640517 and 1908609, 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 contributed to the settlement amounts. After reviewing both settlement agreements and considering Claimant's testimony, the Arbitrator concludes that neither settlement agreement addresses the customers' allegations of unsuitability of Claimant's advice and therefore a decision on expungement is still appropriate.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence as to both occurrences: the Statement of Claim and Amended Statement of Claim; Claimant's BrokerCheck® Report; Claimant's documentation; Claimant's notes and other materials memorializing her interactions with Customers A and B; and Claimant's testimony at hearing.

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. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1640517 and 1908609 from registration records maintained by the CRD for Claimant Melisa Mae Lloyd (CRD Number 4735279) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact as to both occurrences:

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:

As to Customer A's complaint:

Claimant testified that her investment recommendations to Customer A were appropriate to Customer A's investment goals. I reviewed the pleadings, the supporting documents, the BrokerCheck® report, Claimant's hearing testimony and, in particular, Claimant's notes memorializing her interactions with Customer A, and I find that Customer A's allegations of unsuitability are clearly erroneous.

As to Customer B's complaint:

Likewise, Claimant testified to the appropriateness ("right on the money") of her advice to Customer B regarding the variable annuity in question. Based on the pleadings, the documents, the BrokerCheck® Report, Claimant's hearing testimony and, again, her client meeting notes, I find that Customer B's allegations of unsuitability are clearly erroneous.

ARBITRATOR

Thomas J. Patka

-

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

Thomas J. Patka

Thomas J. Patka
Sole Public Arbitrator

03/12/2021

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.

March 12, 2021

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