

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Michael James Burkoff

Case Number: 20-02549

vs.

Respondents

Joseph Gunnar & Co. LLC
National Securities Corporation

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. Members

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Michael James Burkoff: Tosh Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent Joseph Gunnar & Co. LLC (“Joseph Gunnar”): Peter Bon Viso, Esq., Joseph Gunnar & Co. LLC, New York, New York.

For Respondent National Securities Corporation: Emily A. Hayes, Esq. National Securities Corporation, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 7, 2020.

Michael James Burkoff signed the Submission Agreement: August 7, 2020.

Statement of Answer filed by Respondent Joseph Gunnar on or about: September 28, 2020.

Joseph Gunnar signed the Submission Agreement: September 28, 2020.

Statement of Answer filed by Respondent National Securities Corporation on or about: September 28, 2020.

National Securities Corporation signed the Submission Agreement: September 28, 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 Joseph Gunnar took no position on Claimant’s expungement request.

In the Statement of Answer, Respondent National Securities Corporation took no position on Claimant’s expungement request and denied any allegations made in the Statement of Claim not specifically addressed in the Answer.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 775882, 1618066, and 1825066; and compensatory damages in the amount of \$1.00 from each Respondent.

In the Statement of Answer, Respondent Joseph Gunnar requested that all forum fees and costs, including member surcharges, incurred in this proceeding be assessed against Claimant.

In the Statement of Answer, Respondent National Securities Corporation requested that Claimant’s request for damages be denied, and all costs and fees be assessed against Claimant.

At the hearing, Claimant withdrew the request for \$2.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 24, 2021, Claimant advised that the customers in Occurrence Numbers 775882, 1618066, and 1825066 (“customers”) 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 May 25, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

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

Respondent National Securities Corporation participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement. At the hearing, Respondent National Securities Corporation supported Claimant’s request for expungement of Occurrence Numbers 1618066 and 1825066.

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 775882 and 1618066, 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 dispute related to Occurrence Number 1825066 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, Claimant's BrokerCheck® Report, and the settlement agreements in Occurrence Numbers 775882 and 1618066.

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 Number 775882 from registration records maintained by the CRD for Claimant Michael James Burkoff (CRD Number 2751980) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael James Burkoff 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:

This was a non-discretionary account. Based upon the Claimant's testimony it was not possible the allegations were accurate. The complaint was made early in Claimant's career and he made a business decision to resolve the claim although admitting no guilt. There was no finding he had committed any infractions as alleged.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1618066 from registration records maintained by the CRD for Claimant Michael James Burkoff (CRD Number 2751980) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael James Burkoff 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:

The testimony and evidence established that this matter was entirely handled by Claimant's partner and Mr. Burkoff had no involvement in it. The matter was settled without Claimant's financial participation or involvement, and Claimant's partner paid the settlement.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1825066 from registration records maintained by the CRD for Claimant Michael James Burkoff (CRD Number 2751980) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael James Burkoff 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:

The claim was denied, and no payment was made. Based upon the record and Claimant's testimony, the Arbitrator recommends expungement of this claim.

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 person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Joseph Gunnar and National Securities Corporation are each 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 8, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 25, 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

Roger B. Jacobs

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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

Roger B. Jacobs

Roger B. Jacobs
Sole Public Arbitrator

06/10/2021

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.

June 11, 2021

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