

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kelly Glen Kidwell

Case Number: 20-02580

vs.

Respondent
Ameritas Investment Company, LLC

Hearing Site: Los Angeles, California

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 Kelly Glen Kidwell (“Claimant”): Frances Menzer, Esq., HLBS Law, Westminster, Colorado.

For Respondent Ameritas Investment Company, LLC (“Respondent”): Andrea D. Snowden, Esq., Ameritas Investment Company, LLC, Lincoln, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: August 11, 2020.
Claimant signed the Submission Agreement: August 11, 2020.

Statement of Answer filed by Respondent on or about: October 1, 2020.
Respondent signed the Submission Agreement: August 31, 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.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1304883 from his CRD records pursuant to FINRA Rule 2080, as:
 - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
 - c. the claim, allegation or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. A determination of whether Claimant's request for expungement of Occurrence Number 1304883 from Claimant's CRD records meets the FINRA Rule 2080 (b)(1)(C) requirements;
2. Denial of all other requests for relief, including compensatory damages in the amount of \$1.00; and
3. Costs be assessed against Claimant.

At the hearing, Claimant withdrew his 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 February 22, 2021, Claimant submitted an Affidavit confirming the customer in Occurrence Number 1304883 ("Customer") was 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 24, 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 Claimant's expungement request.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1304883 ("Settlement Agreement") due to the length of time since the settlement occurred and Respondent's representation that they were unable to locate or produce the Settlement Agreement. Having reviewed Claimant's CRD records concerning Occurrence

Number 1304883, the Arbitrator considered the amount of payment made in the settlement and that Claimant did not contribute to the settlement amount.

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

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 1304883 from registration records maintained by the CRD for Claimant Kelly Glen Kidwell (CRD Number 1791875) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kelly Glen Kidwell 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 findings of fact:

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

The claim, allegation, or information is false.

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

The Arbitrator finds that Claimant provided consulting services during his employment with Respondent. After Claimant left Respondent's employ, Claimant could not provide such consulting services and it was not his responsibility to do so. Claimant was not a party to the Customer's civil lawsuit and played no role in defending or settling the case. He was not aware of the settlement with the Customer and did not contribute to the settlement.

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	= \$	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
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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 1, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: March 24, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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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

Benjamin F. Breslauer

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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

Benjamin F. Breslauer

Benjamin F. Breslauer
Sole Public Arbitrator

04/15/2021

Signature Date

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April 15, 2021

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