

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joseph A. Medina

Case Number: 20-02604

vs.

Respondent
Cetera Advisors, LLC

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. Member

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

REPRESENTATION OF PARTIES

For Claimant Joseph A. Medina: Tosh Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent Cetera Advisors, LLC: David Feldstein, Esq., Cetera Financial Group, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 13, 2020.

Joseph A. Medina signed the Submission Agreement: August 13, 2020.

Statement of Answer filed by Respondent on or about: October 22, 2020.

Cetera Advisors, LLC signed the Submission Agreement: October 21, 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 1929332 (“Customer A”) and 1971376 (“Customer B”) from Claimant’s CRD Record, pursuant to a finding that the claims, allegations, or information are factually impossible and clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A) and that the claims, allegations, or information are false, pursuant to FINRA Rule 2080(b)(1)(C); and an award of compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested: a statement from the Chairperson on the issue of whether to order recommending that the customer complaints be expunged from Claimant’s CRD Records in the form required by FINRA Rule 2080; denial of Claimant’s request for \$1.00 in compensatory damages; and an order that all forum costs and fees are assessed 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.

On June 25, 2021, Respondent filed a letter stating that Respondent would not appear at the expungement hearing on July 6, 2021.

On July 6, 2021, Claimant advised that Customer A and Customer B were served on February 12, 2021 and February 16, 2021, respectively, with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on July 6, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

Customer A also did not participate in the expungement hearing. The Arbitrator found that Customer A had notice of the expungement request and hearing.

Customer B participated in the expungement hearing and opposed the expungement request.

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 Number 1971376, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 1929332 was not settled and, therefore, there was no settlement document to review.

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

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 1929332 and 1971376 from registration records maintained by the CRD for Claimant Joseph A. Medina (CRD Number 2793924) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joseph A. Medina 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:

Introduction:

Claimant requests a recommendation of expungement of two Occurrence Numbers, 1929332 and 1971376, from Claimant's CRD Record. A telephonic hearing was held by the Arbitrator on July 6, 2021. Claimant testified under oath. Claimant, through counsel, introduced documents which were received into evidence, including Claimant's CRD Record, the settlement agreements, account documentation, and correspondence. The individuals involved in the Occurrence Numbers, Customer A and Customer B, were apprised of the hearing. Customer B appeared at the hearing and offered testimony in opposition to Claimant's expungement request.

FINRA adopted Rule 12805 to establish "procedures that arbitrators must follow before recommending expungement of customer dispute information related to arbitration cases from a broker's Central Registration Depository (CRD) record."

The grounds for expungement are specified in Rules 2080(b)(1)(A), (B), and (C). They are: (A) the claim, allegation, or information is factually impossible or clearly erroneous; (B) the registered person was not involved in the alleged investment-related sales practice violation,

forgery, theft, misappropriation, or conversion of funds; or (C) the claim, allegation, or information is false.

Additionally, Rule 2080(b)(2)(B) provides an alternate ground for expungement if it “would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements.”

Occurrence Number 1929332:

This claim involved the purchase and subsequent cancellation of a variable annuity at Customer A’s request. All monies paid by Customer A were returned except for the required minimum distribution (“RMD”). The claim for return of the RMD was denied by Respondent, and no further action was taken.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1929332 because it is clearly erroneous, false, or both.

Occurrence Number 1971376 (Case Number 18-00352):

Customer B became a client of Claimant’s in 2013. An experienced and sophisticated real estate professional and investor, Customer B’s account objective was growth, her risk tolerance was moderately aggressive, her time horizon was eight (8) years plus, and she had no liquidity needs. After discussions with Claimant, over a period of time, Customer B purchased various illiquid alternate investments such as Real Estate Investment Trusts (“REITs”) and equity in a business development company. In connection with Customer B’s investments, she signed all necessary disclosures and acknowledgements, including an acknowledgement of fees. In 2018, Customer B filed a FINRA arbitration alleging excessive fees and unauthorized trading. The matter was settled for a small fraction of the claim to avoid the cost and risk of litigation. Claimant did not contribute to the settlement amount, and the settlement was not conditioned on any party to the settlement not opposing the expungement request.

The fees and expenses were fully disclosed to Customer B and were in line with industry practices. The allegation of unauthorized trading arose out of a fully disclosed sale to satisfy an account debit for management fees.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1971376 because it is clearly erroneous, false, or both.

Conclusion:

At the hearing, Claimant withdrew the claim for \$1.00 in damages from Respondent. Claimant also testified as to the adverse impact these Occurrence Numbers have had on his business development efforts. The interests of consumer protection and awareness being in no way negatively implicated, the Arbitrator recommends that Occurrence Numbers 1929332 and 1971376 be expunged from Claimant’s CRD Record because Rules 2080(b)(1)(A) and (C) have been satisfied.

2. Any and all claims for relief not specifically addressed herein are denied.

ARBITRATOR

Robert E. Anderson

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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

Robert E. Anderson

Robert E. Anderson
Sole Public Arbitrator

07/14/2021

Signature Date

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July 14, 2021

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