

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Frederick Peter Baerenz

Case Number: 20-02605

vs.

Respondent
Kalos Capital, Inc.

Hearing Site: Washington, D.C.

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 Frederick Peter Baerenz: Docthor Kennedy, MBA, J.D. and Benjamin Winograd, Esq., Advisor Law LLC, Westminster, Colorado.

For Respondent Kalos Capital, Inc.: Michael McComb CCO., Kalos Capital, Inc., Alpharetta, Georgia.

CASE INFORMATION

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

Amended Statement of Claim filed on or about: February 26, 2021.

Frederick Peter Baerenz signed the Submission Agreement: August 13, 2020.

Kalos Capital, Inc. did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Amended Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 2047460; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested: expungement of Occurrence Numbers 2047460 and 2107769; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

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 Kalos Capital, Inc. did not file a Statement of Answer or properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On February 26, 2021, Claimant filed a Motion to Amend the Statement of Claim to which no response was filed. By Order dated March 23, 2021, the Arbitrator granted Claimant's Motion to Amend the Statement of Claim.

On March 1, 2021, Claimant advised that the customers in Occurrence Number 2047460 were served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 8, 2021, Claimant filed an Affidavit confirming that the customers in Occurrence Number 2047460 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On March 24, 2021, Claimant advised that the customer in Occurrence Number 2107769 was served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 26, 2021, Claimant filed an Affidavit confirming that the customer in Occurrence Number 2107769 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 June 8, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The customers in Occurrence Numbers 2047460 and 2107769 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 Number 2047460, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's testimony; Respondent's representative's testimony; Claimant's BrokerCheck® Report; the settlement agreements; and the exhibits.

AWARD

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

1. Claimant's request for expungement of Occurrence Number 2107769 from his registration records maintained by the CRD is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Number 2047460 from registration records maintained by the CRD for Claimant Frederick Peter Baerenz (CRD Number 2388453) with the understanding that, pursuant to Notice to Members 04-16, Claimant Frederick Peter Baerenz 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

The customers alleged that the investments at issue were unsuitable for them. From the credible and unrefuted testimony of both Claimant and Respondent, and evidence presented at the hearing including Claimant's pleading for expungement documented in this Statement of Claim together with exhibits, the customers were knowledgeable, sophisticated and experienced investors. The customers purchased the investment from another financial advisor who also worked with Respondent. Although Claimant met with the customers on one occasion, and eventually assisted the customers with the purchase of the investment, Claimant made no investment recommendation whatsoever to the customers. Neither were the customers, at any time, clients of Claimant. Claimant was merely named the customers' point of contact with respect to the customers' portfolio while the customers' financial advisor was away on a leave of absence. While Claimant did not, at any time, make any investment recommendation to the customers, Claimant's conduct was, at all times, in accordance with the standards of FINRA Rule 2111.

The evidence also indicates that there was no sales practice violation involved in this case. The customers filed an action for arbitration with FINRA but eventually settled the case with Respondent for a fraction of the amount claimed. Claimant had no involvement in negotiating the terms of the settlement agreement and did not contribute to the settlement with the customers. In addition, Respondent appeared at the hearing but did not oppose Claimant's expungement request.

3. 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

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Kalos Capital, Inc. is 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 11, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 8, 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

Douglas Earl McLaren

-

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

Douglas Earl McLaren

Douglas Earl McLaren
Sole Public Arbitrator

06/17/2021

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 17, 2021

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