

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Dwight Hills Emanuelson, Jr.

Case Number: 20-02615

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Dallas, Texas

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 Dwight Hills Emanuelson, Jr. (“Claimant”): Harris Freedman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Joelle A. Simms, Esq., Bressler, Amery & Ross, P.C., Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: August 14, 2020.

Claimant signed the Submission Agreement: August 14, 2020.

Statement of Answer filed on or about: October 1, 2020.

Respondent signed the Submission Agreement: October 1, 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1097636, 1101530, 1101532, 1160707, and 1174212; an award of compensatory damages in the amount

of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

At the hearing, Claimant withdrew the 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 January 27, 2021, Claimant filed notice of death records for one of the two customers in Occurrence Number 1097636 and for the customer in Occurrence Number 1160707. Claimant also advised that the other customer in Occurrence Number 1097636 and the customer in Occurrence Number 1174212 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). On February 1, 2021, Claimant filed an Affidavit confirming the Customers were served with the Notices. Claimant also filed copies of the FedEx tracking information available online for the Notices.

On January 27, 2021, Claimant filed an Affidavit related to their efforts to locate the customers in Occurrence Numbers 1101530 and 1101532.

The Arbitrator conducted a recorded, telephonic hearing on March 2, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

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 also found that Claimant made a good faith effort to locate the customers in Occurrence Numbers 1101530 and 1101532.

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 was unable to review the settlement documentation related to Occurrence Numbers 1097636, 1101530, and 1101532. Representations were made at the hearing that Respondent was unable to produce the settlement agreements related to Occurrence Numbers 1097636, 1101530, and 1101532. The Arbitrator relied upon the testimony provided by Claimant at the hearing, which the Arbitrator found to be credible and reliable, stating that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the disputes related to Occurrence Numbers 1160707 and 1174212 were not settled and, therefore, there were no settlement documents to review.

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

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 1097636, 1101530, 1101532, 1160707, and 1174212 from registration records maintained by the CRD for Claimant Dwight Hills Emanuelson, Jr. (CRD Number 1316011) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dwight Hills Emanuelson, Jr. 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 with respect to Occurrence Numbers 1097636, 1101530, 1101532, and 1174212:

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

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

Claimant testified that Occurrence Numbers 1097636, 1101530, and 1101532 were virtually identical. In each of these occurrences, the customers were previously associated with another financial advisor, who brought them to Respondent. Claimant never met with nor spoke to the customers, and the other financial advisor provided all investment advice to the customers – Claimant provided none.

Claimant also testified that Occurrence Number 1174212 involved a customer that was primarily served by the same other financial advisor. Claimant met the customer only one time, he did not make any investment recommendations to the customer, and the other financial advisor was the primary advisor.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact with respect to Occurrence Number 1160707:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Claimant testified that Occurrence Number 1160707 involved a customer whose investment objective was growth with an aggressive risk tolerance. The customer's account was non-discretionary. Claimant's investment recommendations were based on the customer's investor profile and objectives, which were obtained during the onboarding process. Claimant adhered to the customer's directions and performed in accordance with the customer's investment objectives and risk tolerance. The customer authorized all trades presented by Claimant. Sharp market declines between 2000 and 2002 caused significant losses in the customer's account. Respondent thoroughly investigated and reviewed the customer's allegations of unauthorized transactions and unsuitable investments and determined that the customer's allegations had no merit. The customer did not pursue the allegations.

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
--------------------------	------	-------

**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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee	= \$	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 @ \$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: March 2, 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

David A. Schuler

-

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

David A. Schuler

David A. Schuler
Sole Public Arbitrator

03/11/2021

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 11, 2021

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