

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Howard Brian Adcock

Case Number: 20-02636

vs.

Respondent
Kestra Investment Services, LLC

Hearing Site: Tampa, Florida

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 Howard Brian Adcock (“Claimant”): Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

For Respondent Kestra Investment Services, LLC (“Respondent”): Richard A. D'Amura, Esq. and Melanie L. Ryan, Esq., D'Amura & Zaidman, PLLC, Austin, Texas.

CASE INFORMATION

Statement of Claim filed on or about: August 17, 2020.
Amended Statement of Claim filed on or about: December 10, 2020.
Claimant signed the Submission Agreement: August 17, 2020.

Statement of Answer filed on or about: September 21, 2020.
Statement of Answer to Amended Statement of Claim filed on or about: December 14, 2020.
Respondent signed the Submission Agreement: September 9, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, 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, as amended, Respondent took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of Occurrence Number 1682619, 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, as amended, Respondent requested that the Arbitrator make no award against Respondent and assess all forum filing fees to Claimant.

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 December 10, 2020, Claimant filed a Motion to Amend the Statement of Claim ("Motion to Amend"), to which no response was filed. In an Order dated January 5, 2021, the Arbitrator granted the Motion to Amend.

On February 2, 2021, Claimant advised that the customer in Occurrence Number 1682619 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). Claimant also filed a death record for the Customer's wife. On February 9, 2021, Claimant filed an Affidavit confirming the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on March 18, 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 and Statement of Answer to the Amended Statement of Claim, took no position on the request for expungement.

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 also reviewed the settlement documentation related to Occurrence Number 1682619, 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: Claimant's pleadings, Claimant's testimony, the settlement agreement, and Claimant's 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 1682619 from registration records maintained by the CRD for Claimant Howard Brian Adcock (CRD Number 2861943) with the understanding that, pursuant to Notice to Members 04-16, Claimant Howard Brian Adcock 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; and

The claim, allegation, or information is false.

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

The Customer asserted that Claimant was negligent in selling him securities in a company that was later sued for fraud by the Securities and Exchange Commission ("SEC"). The Customer lost money due to the investment. In the Customer's complaint, he made general accusations against Claimant and Respondent but did not specify any wrongdoing by Claimant. No proof of negligence was ever brought forward. Claimant could not have reasonably known prior to the SEC lawsuit that the securities giving rise to the Customer's complaint were fraudulent and, therefore, unsuitable. Respondent settled with the Customer for a fraction of the alleged loss. Claimant did not participate in or contribute to the settlement, and the Customer continued to utilize Claimant's services after 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 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 15, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 18, 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

Darryl C. Wilson

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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

Darryl C. Wilson

Darryl C. Wilson
Sole Public Arbitrator

03/22/2021

Signature Date

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March 23, 2021

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