

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
Everett Weinberger

Case Number: 20-02657

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: New York, New York

Consolidated with:

Case Number: 20-02731

Claimant
William Thomas Giordano

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

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 Disputes:

20-02657: Associated Person vs. Member

20-02731: Associated Person vs. Member

REPRESENTATION OF PARTIES

20-02657

For Claimant Everett Weinberger: Jennifer P. Farrar, Esq., Farrar Law, PLLC, Tomball, Texas.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Kathryn D. Perreault, Esq., Bressler, Amery & Ross, PC, Birmingham, Alabama.

20-02731

For Claimant William Thomas Giordano: Jennifer P. Farrar, Esq., Farrar Law, PLLC, Tomball, Texas.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Kathryn D. Perreault, Esq., Bressler, Amery & Ross, PC, Birmingham, Alabama.

CASE INFORMATION

20-02657

Statement of Claim filed on or about: August 18, 2020.

Everett Weinberger signed the Submission Agreement: August 6, 2020.

20-02731

Statement of Claim filed on or about August 21, 2020.

William Thomas Giordano signed the Submission Agreement: August 10, 2020.

Statement of Answer filed by Respondent on or about: October 27, 2020.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: October 28, 2020.

CASE SUMMARY

20-02657

In the Statement of Claim, Claimant asserted the following cause of action: factually impossible, false or clearly erroneous information filed in Claimant's Form U5.

20-02731

In the Statement of Claim, Claimant asserted the following causes of action: factually impossible, false or clearly erroneous information filed in Claimant's Form U5.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

20-02657

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1588357 from Claimant's CRD records; compensatory damages in the amount of \$1.00; and any and all relief that the Arbitrator deems just and equitable.

20-02731

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1588354 from Claimant's CRD records; compensatory damages in the amount of \$1.00; and any and all relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimants' claims be denied in full.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On September 22, 2020, the parties agreed to consolidate arbitration case numbers 20-02657 with 20-02731. The Director of FINRA Dispute Resolution Services, pursuant to Rule 13314, combined arbitration case number 20-02657 with 20-02731.

On November 13, 2020, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure (“Code”). On December 29, 2020, Claimant filed a response opposing the Motion to Dismiss. On January 12, 2021, Respondent file a reply in support of the Motion to Dismiss.

On February 4, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. On February 8, 2021, the Arbitrator granted the Motion to Dismiss on the grounds that:

FINRA Rule 13206(a) provides a six-year eligibility period during which a claim is eligible for FINRA arbitration. This period commences on the date of the event giving rise to the claim. In this case, the event which gave rise to the claims occurred on December 16, 2011 when Merrill Lynch, Pierce, Fenner & Smith Inc. filed its U5 report indicating that the Claimants were under internal review when they voluntarily terminated their employment. The claim was filed on August 18, 2020 well beyond this six-year period. The question of when the internal review was completed or when the Claimants knew of its completion is not relevant to the commencement of eligibility period on December 16, 2011.

Respondent’s Motion to Dismiss pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 13206(b) of the Code.

AWARD

After considering the pleadings, the testimony and evidence presented at the February 4, 2021 pre-hearing conference, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants’ claims are dismissed without prejudice, pursuant to FINRA Rule 13206.

FEES

Pursuant to the Code of Arbitration Procedure (“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 events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$ 100.00
Pre-Hearing Conferences: December 10, 2020	1 session
February 4, 2021	1 session

Total Hearing Session Fees	= \$ 100.00
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The Arbitrator has assessed \$75.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Alice E. Winkler

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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

Alice E. Winkler

Alice E. Winkler
Sole Public Arbitrator

02/17/2021

Signature Date

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February 18, 2021

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