

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
William Reilley Herf

Case Number: 20-02663

vs.

Respondent
B. C. Ziegler And Company

Hearing Site: Phoenix, Arizona

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 William Reilley Herf (“Claimant”): Michael O’Gara, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent B. C. Ziegler And Company (“Respondent”): Johnathan W. Hackbarth, Esq., Quarles & Brady LLP, Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: August 18, 2020.
Claimant signed the Submission Agreement: August 18, 2020.

Respondent did not file a Statement of Answer.
Respondent signed the Submission Agreement: October 8, 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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1635951 from Claimant’s CRD records pursuant to FINRA Rule 2080 (b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;

2. Expungement of Occurrence Number 1635951 from Claimant's CRD records pursuant to FINRA Rule 2080 (b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1635951;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. 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.

On October 8, 2020, the parties submitted a Joint Agreement and Stipulation ("Stipulation"). In the Stipulation, Respondent stated that it did not oppose Claimant's expungement request.

On March 1, 2021, Claimant submitted an Affidavit confirming that the customer in Occurrence Number 1635951 ("Customer") 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 April 13, 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 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 was not able to review the settlement documentation related to Occurrence Number 1635951. Claimant requested the settlement agreement from Respondent, but Respondent was unable to provide it. Having reviewed Claimant's BrokerCheck® Report and heard testimony at the hearing concerning Occurrence Number 1635951, the Arbitrator considered the amount of payment made in the settlement and that Claimant did not contribute to the settlement amount. The Arbitrator noted that the date of the settlement preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; Claimant's exhibits; 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 Number 1635951 from registration records maintained by the CRD for Claimant William Reilley Herf (CRD Number 2978220) with the understanding that, pursuant to Notice to Members 04-16, Claimant William Reilley Herf 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:

The Customer was an experienced investor. Among other investments, he bought distressed residential real estate, fixed it up and sold it for a profit. Claimant presented a variety of investment options to the Customer, including an 11% coupon in Erickson Retirement Communities LLC ("Erickson"), which had a five-year annuity ("Erickson Bond"). The Customer was interested in the 11% Erickson Bond. Claimant informed the Customer that the Erickson Bond was a private offering that was not liquid and had no secondary market. The Customer did not have any complaints about the investment until the collapse of Lehman Brothers during the recession in 2008. Erickson filed for bankruptcy and a list of Erickson bondholders was circulated without authorization.

The alleged complaint by the Customer stated, "Client is alleging an investment recommended/sold to them was unsuitable and outside their risk tolerance." No such complaint was made by the Customer to Claimant or Respondent. In fact, the Customer remained Claimant's client for five years, including a period after the problem developed with the Erickson Bond. There is no evidence that the Erickson Bond was unsuitable and/or outside the Customer's risk tolerance.

A settlement was made with the Customer by Respondent. The arbitrator determined that there was no agreement that a future expungement was conditioned on the settlement. Claimant did not contribute to the settlement. Notice of the expungement proceedings was given to the Customer. The Customer did not contact Claimant or his attorney.

Based on the uncontradicted evidence presented, the Arbitrator concludes that: the claim, allegation, or information is factually impossible and clearly erroneous within the meaning of Rule 2080 (a)(1)(A); and the claim, allegation, or information is false within the meaning of Rule 2080 (a)(1)(C). Expungement should be granted.

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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	=\$	150.00
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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: April 13, 2021	1 session	

Total Hearing Session Fees	=\$	100.00
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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

Merton E. Marks

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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

Merton E. Marks

Merton E. Marks
Sole Public Arbitrator

05/05/2021

Signature Date

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May 05, 2021

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