

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
William Reilley Herf

Case Number: 20-02669

vs.

Respondent  
Stifel, Nicolaus & Co., Inc.

Hearing Site: Phoenix, Arizona

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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 Stifel, Nicolaus & Co., Inc. (“Respondent”): Paul Klein, Esq., Stifel, Nicolaus & Co., Inc., Saint Louis, Missouri.

**CASE INFORMATION**

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

Statement of Answer filed by Respondent on or about: September 15, 2020.  
Respondent signed the Submission Agreement: September 15, 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.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2013465 from his 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 2013465 from his 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 related to Occurrence Number 2013465;
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.

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

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 March 22, 2021, Claimant advised that the customer in Occurrence Number 2013465 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 30, 2021, Claimant filed an Affidavit confirming that the 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 May 4, 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, did not oppose the request for expungement.

The Customer also participated in the expungement hearing and opposed the expungement request.

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 noted that the dispute related to Occurrence Number 2013465 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Claimant's exhibits; Claimant's BrokerCheck® Report; Claimant's testimony; and the Customer'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 2013465 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:

Claimant is seeking expungement of Occurrence Number 2013465 from his CRD records pursuant to FINRA Rule 2080 (b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous. Claimant also requests expungement pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false.

Claimant has been a financial services professional since November of 1997. On April 5, 2017, the Customer became a client of Claimant while Claimant was employed at B.C. Zeigler and Company ("Zeigler"). The Customer wanted Claimant to manage her share of a trust from her grandmother that had to be moved from a trust company due to its size. The Customer was referred to Claimant by her daughter, who had an account with him. The Customer continued to self-manage the rest of her assets and investments.

After discussions with the Customer and determining her investor profile and objectives, Claimant recommended an advisory allocation which included 18 different mutual funds and cash ("Customer Account"). Claimant then explained in detail the terms, risks, fees, advantages and disadvantages of the recommended investments. These investments were in line with the Customer's investor profile, which was moderate risk with growth objective. The Customer stated that she had no need for liquidity due to other income and investments. The Customer completed and signed subscription and disclosure documents, affirming her understanding of the advisory nature of her account. She also received monthly account statements as well as quarterly performance reports mailed to her by Zeigler and Respondent.

In June 2017, the Customer and her husband opened a joint account with Zeigler into which they transferred a portfolio (which contained some high-risk bond funds). At the Customer's request, Claimant reallocated the funds in a way that was consistent with the rest of the allocations of the Customer Account.

In March 2018, Zeigler was acquired by Respondent. For various reasons, including a trade war with China and concerns of a government shutdown, the stock market declined dramatically from October to December 2018. December 2018 was the worst December on record for the market.

As a result of the instability of the market, the value of the Customer Account declined. The Customer expressed dissatisfaction with the losses incurred in these months (after gaining for several earlier months). Due to the Customer's complaints, Claimant offered various options for changes in the Customer Account, including a full liquidation of the portfolio for almost its original value. The Customer declined to make any changes to the portfolio or to the investment strategy. The Customer did request to liquidate various equity funds, to avoid further losses, and Claimant completed the transactions as instructed. The Customer did not tell Claimant she had already lodged a formal complaint.

On December 26, 2018, the Customer filed a formal complaint with Respondent and alleged that Claimant invested in high-risk funds which resulted in losses.

Respondent conducted a thorough investigation and, on January 23, 2019, denied the Customer's claim. Respondent found the Customer Account had been allocated according to the Customer's investor profile and risk tolerance and that she had been informed about all aspects of the account. The Customer did not pursue her claim in arbitration or in court.

The allegation that Claimant invested in high-risk funds, resulting in a loss, is false and/or clearly erroneous. Claimant allocated the Customer Account according to the Customer's investor profile and risk tolerance. The Customer appeared at the hearing and testified that she was fine with the allocation until Claimant left Zeigler and her investment sustained losses over a few months period, beginning in October 2018. The Customer stated that she never read the various statements and materials outlining the risks, and that she did not know she could lose principal from her investment. However, that does not make the investment "high-risk."

Claimant was not responsible for the market's loss, and his recommendations were suitable considering the Customer's risk tolerance and overall objectives. The Customer chose not to follow Claimant's advice to reallocate her portfolio to mitigate these losses, which, if she had, would have resulted in an actual gain in a short amount of time.

For these reasons, the standards for expungement in FINRA Rule 2080 (b)(1)(A) and 2080 (b)(1)(C) have been met and these allegations should be expunged from Claimant's CRD records.

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 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 |
|------------------|------|--------|

#### **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 7, 2020                               | 1 session |       |

|   |            |        |
|---|------------|--------|
| Two (2) hearing sessions on expungement request @ \$50.00/session | = \$       | 100.00 |
| Hearing: May 4, 2021  | 2 sessions |        |

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|                            |      |        |
|----------------------------|------|--------|
| Total Hearing Session Fees | = \$ | 150.00 |
|----------------------------|------|--------|

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**

Walter Steven Schwartz

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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**

***Walter Steven Schwartz***

Walter Steven Schwartz  
Sole Public Arbitrator

**06/03/2021**

Signature Date

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June 03, 2021

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