

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Patrick Michael Foley

Case Number: 20-02671

vs.

Respondent
Janney Montgomery Scott LLC

Hearing Site: Philadelphia, Pennsylvania

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 Patrick Michael Foley: Zachary Morse, J.D., and Dochter Kennedy, MBA J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Janney Montgomery Scott LLC: Jill B. Clarke, Esq., Janney Montgomery Scott LLC, Philadelphia, Pennsylvania.

CASE INFORMATION

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

Amend Statement of Claim filed on or about: September 3, 2020.

Patrick Michael Foley signed the Submission Agreement: August 18, 2020.

Statement of Answer filed by Respondent on or about: September 17, 2020

Janney Montgomery Scott LLC signed the Submission Agreement: September 18, 2020.

CASE SUMMARY

In the Statement of Claim and Amended 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 request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1293421; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested: expungement of Occurrence Number 1293421; deletion of all Disclosure Reporting pages accompanying the underlying claim; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable

In the Statement of Answer, Respondent did not set forth a specific relief request.

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 July 7, 2021, Claimant advised that one of the customers (“customer P”) in Occurrence Number 1293421 is deceased and that the other customer (“customer A”) was served with the Statement of Claim and notice of the date and time of the expungement hearing. On July 12, 2021, Claimant filed an Affidavit confirming that customer A 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 August 18, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

Customer A also did not participate in the expungement hearing. The Arbitrator found that customer A 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 unable to review the settlement documentation related to Occurrence Number 1293421 because neither Claimant nor Respondent are in possession of the settlement document due to the age of the dispute. Based on Claimant’s testimony, the Arbitrator found that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant contributed to the settlement amount. Although Claimant contributed to the settlement amount, he testified that he made the business decision to avoid the cost of arbitration. The settlement was a nominal amount compared to the potential cost of arbitration or litigation. The Arbitrator therefore found that expungement is still appropriate.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s testimony; the pleadings; and the exhibits.

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 1293421 from registration records maintained by the CRD for Claimant Patrick Michael Foley (CRD Number 2266555) with the understanding that, pursuant to Notice to Members 04-16, Claimant Patrick Michael Foley 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 finding of fact:

The claim, allegation, or information is false.

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

The allegation that Claimant churned accounts is false and clearly erroneous. All of the customers' accounts were non-discretionary. Claimant did not have discretion over the accounts and never exercised control. All investment decisions were authorized by the customers. Under these circumstances, churning cannot take place. Furthermore, there was no excessive buying or selling of securities in the customers' accounts. The claim that Claimant forged a subscription agreement is also false and clearly erroneous. Under a tight deadline, Claimant signed a subscription agreement at the request of the customers to facilitate the processing of an agreed upon purchase. The subscription agreement had already been signed by the customer who had legal permission to undertake trading on his wife's behalf. Claimant did not intend to commit any act of fraud or wrongdoing.

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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Janney Montgomery Scott LLC 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: January 25, 2021 1 session

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

Louis P. Wagman

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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

Louis P. Wagman

Louis P. Wagman
Sole Public Arbitrator

08/25/2021

Signature Date

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August 25, 2021

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