

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

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In the Matter of the Arbitration Between:

Claimant

Jason Leonard Freiwald

Case Number: 20-02697

vs.

Respondent

Waddell & Reed

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 Jason Leonard Freiwald (“Claimant”): Chelsea Masters, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Waddell & Reed (“Respondent”): Eric D. Martin, Esq. and Steven J. Alagna, Esq., Bryan Cave Leighton Paisner LLP, St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: August 19, 2020.

Amended Statement of Claim filed on or about: November 20, 2020.

Claimant signed the Submission Agreement: August 19, 2020.

Statement of Answer filed by Respondent on or about: October 9, 2020.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: December 22, 2020.

Respondent signed the Submission Agreement: October 9, 2020.

**CASE SUMMARY**

In the Statement of Claim and the 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 expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1866152 from Claimant's CRD records pursuant to FINRA Rule 2080, as;
  - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
  - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
  - c. the claim, allegation, or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1866152 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 1866152 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 1866152;
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 and the Answer to the Amended Statement of Claim, Respondent requested:

1. Denial of Claimant's request for compensatory damages in the amount of \$1.00; and
2. Such other and further relief as the Arbitrator deems just and proper.

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 November 20, 2020, Claimant filed a motion to amend the Statement of Claim, to which no response was filed. The Arbitrator granted the motion.

On January 21, 2021, Claimant advised that the customer in Occurrence Number 1866152 ("Customer") was served with the Amended Statement of Claim and notice of the date and time of the expungement hearing. On January 26, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Amended Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on April 27, 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 the Answer to the Amended Statement of Claim, 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 also reviewed the settlement documentation related to Occurrence Number 1866152, 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 exhibits and the settlement agreement between Respondent and the Customer.

### **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 1866152 from registration records maintained by the CRD for Claimant Jason Leonard Freiwald (CRD Number 2421932) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jason Leonard Freiwald 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 factually impossible or clearly erroneous.

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

Pursuant to Rule 2080(b)(1)(A), the Customer's claims of unsuitability and failure to disclose potential tax consequences of trades are clearly erroneous. The documentary evidence, corroborated by Claimant's sworn testimony, established that the non-discretionary investment in the Ivy High Income Opportunity Fund ("Ivy Fund") was suitable at the time it was made based on the Customer's investment experience, risk tolerance, and net worth. The Customer was also apprised, in the form she signed approving the purchase and the estimate given by Claimant, that there would be tax consequences from selling the investments held in her managed portfolio to raise the funds needed to purchase the Ivy Fund investment.

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 14, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 27, 2021	1 session	

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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**

Marc Kalish

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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**

***Marc Kalish***

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Marc Kalish  
Sole Public Arbitrator

**05/19/2021**

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Signature Date

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May 19, 2021

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