

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Erik McVann Feldhaus

Case Number: 20-02707

vs.

Respondent
BMO Harris Financial Advisors, Inc.

Hearing Site: Chicago, Illinois

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 Erik McVann Feldhaus (“Claimant”): Benjamin Winograd, Esq. and Dochtor Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent BMO Harris Financial Advisors, Inc. (“Respondent”): Maria L. Kreiter, Esq. and Nina Beck, Esq., Godfrey & Kahn, S.C., Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: August 20, 2020.
Amended Statement of Claim filed on or about: September 23, 2020.
Claimant signed the Submission Agreement: August 20, 2020.

Statement of Answer filed on or about: October 9, 2020.
Respondent signed the Submission Agreement: October 8, 2020.

CASE SUMMARY

In 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 to the Amended Statement of Claim, Respondent did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested expungement of Occurrence Number

1864265, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer to the Amended Statement of Claim, Respondent did not request any specific relief.

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 22, 2021, Claimant advised that the customer in Occurrence Number 1864265 (“Customer”) was served with the Amended Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On July 26, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on September 10, 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 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 1864265, 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 testimony; settlement agreement; BrokerCheck® Report; Notice and Affidavit; and Claimant’s Exhibits 1-4.

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 1864265 from registration records maintained by the CRD for Claimant Erik McVann

Feldhaus (CRD Number 3256403) with the understanding that, pursuant to Notice to Members 04-16, Claimant Erik McVann Feldhaus 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; and

The claim, allegation, or information is false.

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

The evidence refuted the Customer’s contentions of abusive sales practices. Claimant indicated that the Customer and her husband were the motive force for the selected strategy, relying on lines of credit to finance home construction before Claimant was involved with the account. The Customer’s claims of exclusive priority on short term timing for investment is contradicted by Claimant’s testimony that there was a clear alternative that Respondent would have adopted if that had been the Customer’s focus. Prior to opening the account, alternatives were clearly explained with detailed histories of prior 10 years of performance results to provide a frame of reference. The Customer’s objectives and financial circumstances were clearly assessed. The post-account closure contentions asserted by the Customer of manipulated implementation of strategy were inaccurate. The Customer opted to terminate the account long before the portfolio manager could follow the designed investment plan, with the Customer granting full decision making discretion to the portfolio manager. Claimant was not involved in settlement discussions, was not assessed any portion of the payout, and after an internal investigation of the complaint, was judged not responsible for any wrongdoing and continued his employment with Respondent as a wealth manager for several years subsequently.

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

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 @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: February 3, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: September 10, 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

Gregory G. Gocek

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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

Gregory G. Gocek

Gregory G. Gocek
Sole Public Arbitrator

09/27/2021

Signature Date

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September 27, 2021

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