

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jimmy Allen Barker

Case Number: 20-02712

vs.

Respondent
Banc of America Investment Services, Inc.

Hearing Site: Nashville, Tennessee

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 Jimmy Allen Barker: Chelsea Masters, Esq. and Doctor Kennedy, J.D., M.B.A., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Banc of America Investment Services, Inc.: Sarah K. Yates, Esq., Bressler Amery Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Jimmy Allen Barker signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: October 8, 2020.

Banc of America Investment Services, Inc. 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”).

In the Statement of Answer, Respondent took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1463426; 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 delineate 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 February 22, 2021, Claimant filed an Affidavit confirming that the customers in Occurrence Number 1463426 (“Customers”) were 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 March 24, 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, took no position on the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 1463426, 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 Statement of Claim; Respondent’s Statement of Answer; Claimant’s Proof of Service upon the Customers; the testimony of Claimant and a retired compliance officer of Respondent who handled the Customers’ claim; and Respondent’s Statement of Answer in the underlying claim.

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 1463426 from registration records maintained by the CRD for Claimant Jimmy Allen Barker (CRD Number 2367421) with the understanding that, pursuant to Notice to Members 04-16,

Claimant 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 Customers filed a FINRA arbitration alleging "unsuitable investments in mutual funds, municipal bonds, and structured notes during the time periods of September 2006 through August 2008. Alleged damages unspecified."

In mediation the Customers sought \$400,000.00 in damages but settled for a fraction of that amount. Respondent settled the case admitting no liability and expressly denying liability but settled the matter as a compromise of a disputed claim. Claimant did not sign the settlement agreement and did not contribute to the settlement payment. Respondent originally investigated the Customers' claim and found the Claimant had acted correctly, in good faith and with no wrongful acts. Respondent took no position on Claimant's request for expungement.

The evidence presented at the expungement hearing, combined with the testimony of Claimant and a retired compliance officer of Respondent who handled the Customers' claim, led the Arbitrator to believe that Claimant did due diligence in recommending the investments to the Customers, understanding their financial position, investment goals, time range and risk tolerance. The Customers were fully informed as to their investments, discussed them fully with Claimant, and were given written information on the investments, including a prospectus, for which they signed a receipt. The Arbitrator found the investments to be suitable. The Arbitrator finds the Customers' version of the events not credible. While the investments performed well, the Customers did not complain. However, when the market fell due to the mortgage crisis, the Customers were not happy with a loss. While the Customers may have been unhappy, there was no wrongdoing on the part of Claimant.

The Arbitrator reviewed the settlement agreement, and considered the amounts paid to the Customers and considered any other terms and conditions of the settlement. The Arbitrator finds that the Customers' allegations are not supported by the evidence, and are therefore, factually impossible and false. For these reasons, expungement of Claimant's record is appropriate.

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 22, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session =\$ 50.00
Hearing: March 24, 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

Michael J. Ahlstrom

-

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

Michael J. Ahlstrom

Michael J. Ahlstrom
Sole Public Arbitrator

03/31/2021

Signature Date

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.

March 31, 2021

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