

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Darin Lee Gibson

Case Number: 20-02715

vs.

Respondent
AXA Advisors, LLC

Hearing Site: Los Angeles, California

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 Darin Lee Gibson (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

For Respondent AXA Advisors, LLC (“Respondent”): Michael Bryant, Esq., Gordon Rees Scully Mansukhani, LLP, San Diego, California.

CASE INFORMATION

Statement of Claim filed on or about: August 20, 2020.
Amended Statement of Claim, filed on or about: September 16, 2020.
Claimant signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: September 3, 2020
Answer to Amended Statement of Claim filed by Respondent on or about: September 16, 2020.
Respondent signed the Submission Agreement: September 3, 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 1620318 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 1620318 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 1620318 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 1620318;
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 Answer to the Amended Statement of Claim, Respondent requested:

1. Claimant take nothing against Respondent, and Claimant's request for \$1.00 in compensatory damages be denied;
2. To the extent Respondent is required to participate in the proceedings, that Respondent be awarded the costs of this proceeding; and
3. All of costs of the proceeding, including member forum fees, be assessed against Claimant.

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 11, 2021, Claimant advised that the customer in Occurrence Number 1620318 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 15, 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 19, 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 1620318, 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: pleadings; Claimant's exhibits; Claimant's BrokerCheck® Report; proof of service to the Customer; and Claimant'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 1620318 from registration records maintained by the CRD for Claimant Darin Lee Gibson (CRD Number 2684870) with the understanding that, pursuant to Notice to Members 04-16, Claimant Darin Lee Gibson 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 preponderance of evidence contradicts the claims underlying action, which is described in the CRD as: "Client alleges the sale of a 2012 variable annuity was not suitable with respect to her financial goals." The testimony and documents provided indicate facts to the contrary; specifically, that the Customer described and affirmed her investment goals and objectives and that the recommended annuity was suitable given those goals and objectives. Thus, the Arbitrator finds the Customer's complaint alleging lack of suitability to be false and recommends expungement.

Claimant testified, and exhibits show, that the Customer represented her investment objective as “income” and that the underlying investment was suitable for this investment objective. The Customer was provided with information about the annuity including the prospectus, information about fees and charges, and projected investment performance. Claimant testified that upon consultation with her CPA, the Customer changed her mind regarding the investment. Claimant’s exhibit 3 is an email from the Customer where she appears to affirm that she believed the investment was suitable, and wrote, “I believe you are sincere and offered your best product to suit my financial needs. At the time I agreed with you. I no longer do.” The Arbitrator notes that the Customer did not participate in the expungement hearing, although proof of service was submitted on the record.

The Arbitrator notes that underlying Customer complaint was settled without participation by Claimant. Claimant testified that the settlement was to allow the Customer to cancel the annuity and effectively not incur surrender charges under the contract. Claimant’s testimony is confirmed by Respondent’s statement in the CRD that “[Claimant] provide[d] a recommendation that was suitable to the customer’s needs. Nonetheless, [Respondent] agreed to make a good faith settlement offer to the customer to cancel the variable annuity contract and refund...the surrender charges.”

Claimant’s exhibit 5 is a lengthy contemporaneous letter from Respondent to the Customer which states, in part, “...we believe that [Claimant] fulfilled his professional responsibilities and acted in good faith to provide products and services that would meet your needs.” This letter clearly establishes that the settlement was a decision by Respondent, not participated in by Claimant, and also that Respondent contemporaneously thoroughly reviewed and documented Claimant’s performance and recommendations as appropriate.

Claimant credibly testified that the Customer was provided with a recommendation that was suitable based on her memorialized investment objectives, but that she ultimately changed her mind. There is nothing in the admitted exhibits which contradict this testimony. Thus, the testimony and exhibits sufficiently establish that the Customer complaint as memorialized on the CRD is false.

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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

April 21, 2021, postponement requested by Claimant = \$ 50.00

Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fees to Claimant.

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 16, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 19, 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

Andrew M. Mintzer

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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

Andrew M. Mintzer

Andrew M. Mintzer
Sole Public Arbitrator

06/18/2021

Signature Date

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June 21, 2021

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