

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joshua Christian Klump

Case Number: 20-02723

vs.

Respondent
Fifth Third Securities, Inc.

Hearing Site: Boca Raton, Florida

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 Joshua Christian Klump: Harris Freedman Esq., Of Counsel, HLBS Law in Westminster, Colorado.

For Respondent Fifth Third Securities, Inc.: R. Samuel Gilley, Esq., Dinsmore & Shohl LLP, Cincinnati, Ohio.

CASE INFORMATION

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

Joshua Christian Klump signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: September 30 2020.

Fifth Third Securities, Inc. signed the Submission Agreement: October 20, 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 did not contest Claimant’s expungement request, stated that it did not intend to participate in the hearing, and denied any liability and the customers’ allegations.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1553200; 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 relief request.

At the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On May 11, 2021, Claimant advised FINRA that the customers in Occurrence Number 1553200 (“Customers”) were served via FedEx with the Statement of Claim and notice of the date and time of the expungement hearing. The FedEx online tracking system confirmed delivery to the Customers on Friday, May 14, 2021 at 2:03 p.m.

The Arbitrator conducted a recorded telephonic hearing on June 2, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent’s counsel participated in the hearing and did not oppose Claimant’s expungement request.

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.

Pursuant to the Arbitrator’s Order dated May 28, 2021, Claimant filed an Affidavit on June 1, 2021, attesting to his efforts to obtain a copy of the settlement agreement related to Occurrence Number 1553200. The Affidavit reflected that Claimant requested a copy of the settlement agreement from Respondent, but that Respondent confirmed in writing that it no longer retains a copy. Claimant also stated that he did not receive any communication from the Customers.

During the expungement hearing, Respondent’s counsel stated that it is Respondent’s policy not to retain files for more than seven years, and that after seven years, Respondent disposes of them. He further represented that he made a diligent search for the settlement agreement, but it was no longer available because more than seven years had elapsed.

Based on the foregoing, the Arbitrator was unable to review the settlement documentation related to Occurrence Number 1553200. Notwithstanding the foregoing, the Arbitrator noted that, based on the testimony presented, 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; Claimant's BrokerCheck® Report; proof of service of notice of this hearing on the underlying Customers; and the statement by Respondent's counsel about the unavailability of the settlement agreement.

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 1553200 from registration records maintained by the CRD for Claimant Joshua Christian Klump (CRD Number 2836032) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joshua Christian Klump 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:

The underlying complaint was made by a husband and wife. Claimant testified that the husband requested for Claimant to provide him with information on ETF's on gold, oil and natural gas at different times. Claimant did so, explaining to the husband that ETF investments are high risk investments. The original investments in gold and oil ETFs were very profitable; the natural gas investment suffered a loss. Claimant explained the risk and reward aspects of ETFs and the husband understood and accepted the risk. The Arbitrator found it compelling that the husband only claimed the natural gas investment was unsuitable. The Arbitrator noted that Claimant has only this one claim against him in a 24-year career and found Claimant's testimony to be straightforward and credible. The Customers were duly notified of this hearing and did not appear.

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: January 27, 2021 1 session

One (1) hearing session on expungement request @ \$ 50.00/session =\$ 50.00
Hearing: June 2, 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

Carl Shechter

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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

Carl Shechter

Carl Shechter
Sole Public Arbitrator

06/09/2021

Signature Date

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June 09, 2021

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