

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Roger E. Camp

Case Number: 20-02726

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

Hearing Site: New York, New York

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 Roger E. Camp: Benjamin Winograd and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc.: Laura A. Pizzitola, Esq., Of Counsel, Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: August 20, 2020.
Amended Statement of Claim filed on or about: October 9, 2020.
Roger E. Camp signed the Submission Agreement: August 20, 2020.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: December 7, 2020.
Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: December 7, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, 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 Amended Statement of Claim, Respondent took no position on Claimant’s expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested: expungement of Occurrence Number 79533; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer to Amended Statement of Claim, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

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 or about July 26, 2021 and August 2, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with the LexisNexis death record reflecting that the Customer involved in Occurrence Number 79533 passed away on November 23, 2010.

The Arbitrator found that the lack of service on the Customer involved in Occurrence Number 79533 of the Statement of Claim, as amended, and notice of the expungement hearing, is excused because the Customer is deceased.

On or about September 13, 2021, Respondent filed with FINRA Dispute Resolution Services a notice to serve as confirmation that Respondent will not participate in the expungement hearing, and Respondent reiterated its position as contained in its Statement of Answer to Amended Statement of Claim.

The Arbitrator conducted a recorded, telephonic hearing on September 16, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customer also did not participate in the expungement 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 noted that the dispute related to Occurrence Number 79533 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's oral testimony at the expungement hearing; Claimant's updated BrokerCheck® Report; and Respondent's Answer, which asserted that due to the age of the Customer's complaint, no additional documentation can be located.

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 79533 from registration records maintained by the CRD for Claimant Roger E. Camp (CRD Number 38988) with the understanding that, pursuant to Notice to Members 04-16, Claimant Roger E. Camp 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.

The claim, allegation, or information is false.

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

Claimant has been employed by Respondent since 1973. Except for Occurrence Number 79533, Claimant’s record reflects no other customer complaints in those forty-eight (48) years. The relevant security was stock in Gulf Oil. In or about 1983, and prior to the time of the Customer’s sale of this holding, Gulf Oil was conducting negotiations with several competing potential buyers. In the course of these negotiations, the value of the Customer’s Gulf Oil securities was rising. Claimant testified that, in accordance with Claimant’s regular practice, Claimant advised the Customer concerning the possible future rise or fall of the security’s value depending on the result of these negotiations. The Customer, having been properly advised, chose to sell and take the immediate profit. Thereafter, negotiations for the sale of Gulf Oil were successful, the purchase of Gulf Oil was completed, and the value of the security continued to rise. The Customer’s complaint of a sales practice violation was without merit.

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: February 5, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: September 16, 2021	1 session	

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

Joan M. Traub

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Joan M. Traub

Joan M. Traub
Sole Public Arbitrator

09/20/2021

Signature Date

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September 20, 2021

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