

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Roger E. Camp

Case Number: 20-02727

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, J.D. and Dochter Kennedy, MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Sarah K. Yates, Esq., 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: December 2, 2020.
Roger E. Camp signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: October 7, 2020.
Statement of Answer to Amended Statement of Claim filed by Respondent on or about: December 22, 2020.
Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: October 5, 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 and 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 Numbers 188626, 1062773 and 1083650; 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 and Statement of Answer to Amended Statement of Claim, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

At the beginning of 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 November 20, 2020, Claimant filed a Motion to Amend the Statement of Claim. No opposition was filed by Respondent. On or about December 2, 2020, the Arbitrator issued an Order that granted the Motion to Amend the Statement of Claim.

On or about January 25, 2021, Claimant advised that the customers in Occurrence Numbers 188626 and 1062773 ("Customer A and Customer B") were served with a copy of the Statement of Claim, as amended, notice of the date and time of the expungement hearing and of their right to participate therein. On or about February 1, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with proof of service via FedEx upon the underlying Customers, advising that Customer A and Customer B were served with a copy of the Statement of Claim, as amended, and notice of the date and time of the expungement hearing.

On or about January 25, 2021, Claimant filed with FINRA Dispute Resolution Services, the death record and obituary reflecting that the customer involved in Occurrence Number 1083650 ("Customer C") passed away.

On or about January 25, 2021, Claimant advised that the next of kin for Customer C was served with a copy of the Statement of Claim, notice of the date and time of the expungement hearing and of the Customer's right to participate therein. On or about February 1, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with proof of service via FedEx upon the next of kin for the underlying Customer, advising that the next of kin for Customer C was served with a copy of the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator found that the lack of service on Customer C involved in Occurrence Number 1083650 of the Statement of Claim, as amended, and notice of the expungement hearing, is excused because Customer C is deceased and proof of service on the next of kin was sufficient.

On or about February 9, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit, in which Claimant described his attempts at service upon Customer B that those were

returned, and Claimant was unable to find a good address. The Arbitrator found that Claimant made a sufficient effort to serve Customer B.

On or about March 8, 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 and Statement of Answer to Amended Statement of Claim.

The Arbitrator conducted a recorded, telephonic hearing on March 9, 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 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 occurrences in the CRD.

On or about February 16, 2021, Claimant filed with FINRA Dispute Resolution Services a notice representing that he was unable to produce the settlement agreement in connection with Occurrence Number 188626 because Respondent confirmed in writing that it had no documents, including the settlement agreement, responsive to Claimant's discovery requests. During the hearing, Claimant addressed the terms of the settlement agreement in his testimony, which the Arbitrator deemed to be sufficient. The Arbitrator determined that no further steps were required in this regard.

The Arbitrator noted that the disputes related to Occurrence Numbers 1062773 and 1083650 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the testimony of Claimant; and the written representation from Respondent as to the inability to locate the settlement agreement in connection with Occurrence Number 188626, due to the age of the customer complaint.

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 Numbers 188626, 1062773 and 1083650 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; and

The claim, allegation, or information is false.

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

Occurrence Number 188626

Expungement is recommended for this occurrence. Expungement is appropriate as Claimant provided evidence that he provided sufficient and competent advice to Customer A about the investment. Claimant testified that he spoke with Customer A numerous times about the potential investment and its suitability to Customer A’s portfolio and sent a prospectus and marketing brochure on the investment. Customer A affirmatively signed all documents necessary to approve the purchase and acknowledged its suitability to Claimant. The recommended investment was appropriate to Customer A’s needs and was intended to add to the well-diversified portfolio of Customer A. The investment comprised 20% of the portfolio and was not overly concentrated. When the investment declined, Respondent, embarrassed by its performance returned to all customers of this investment, 50% of their original investment. Customer A therefore received 50% of his initial investment in the fund. When Customer A filed a complaint based on losses within this investment, Respondent settled with Customer A without the input or approval of Claimant. Claimant did not contribute to the settlement and does not believe he was provided with a copy of the settlement agreement. Due to the age of this customer complaint, Respondent was unable to locate or provide a copy of the settlement agreement. Accordingly, the allegations in the customer complaint have proved to be false and clearly erroneous.

Occurrence Number 1062773

Expungement is recommended for this occurrence. Customer B filed a complaint that alleged without any specificity or request for specific damages that “errors” were made with her investments. Claimant had a cordial relationship with Customer B, and all trades at that time were non-discretionary, meaning that a customer’s approval was always required for purchase and sales. Customer B always approved purchases and sales, and Claimant always had explicit customer approval for all transactions. After a belligerent conversation with Customer B’s husband, Claimant requested that Customer B move their funds from Respondent. No specificity of the allegations in the customer complaint were ever made, and no indication of any amount of losses or damages sustained were ever provided by Customer B. Respondent denied the claim, and Customer B did not pursue it further. Based on the evidence, the allegations were clearly erroneous, false and factually impossible, and therefore expungement is recommended.

Occurrence Number 1083650

Expungement of this occurrence is recommended. This customer complaint was made by Customer C's next of kin, after the death of Customer C. Claimant and Customer C had a cordial relationship, and they spoke frequently both on the phone and in person. Customer C specifically requested to work with Claimant after his prior advisor left Respondent. Customer C had many years of investment experience and his investment goal was income. Customer C was retired and was interested in fixed income investments. Customer C had purchased through Claimant certain investment grade stocks which paid good dividends. However, these stocks eventually became below grade, but Customer C still wanted to purchase more, and these sales were listed as unsolicited trades. Claimant advised Customer C against purchasing the stocks once they were below investment grade, as they were then unsuitable. When initially purchased, the stocks were investment grade. Customer C listened to Claimant, but eventually went against Claimant's advice and purchased more of these stocks. Claimant advised against this, as he did not want to add to Customer C's existing positions with investments that were not investment grade. Despite this, Customer C ignored Claimant's advice. Upon the death of Customer C, the portfolio was moved from Respondent and Customer C's next of kin made this complaint, stating the stocks were unsuitable to the portfolio. Respondent denied the claim, stating that Customer C purchased the stocks on his own and were not solicited by Claimant. Based upon the foregoing evidence, the allegations in the customer complaint are clearly erroneous, false and factually impossible.

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
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Pre-Hearing Conference: December 9, 2020	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: March 9, 2021	1 session		
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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

Susan Romano

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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

Susan Romano

Susan Romano
Sole Public Arbitrator

03/10/2021

Signature Date

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March 10, 2021

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