

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Everest K Y Wong

Case Number: 20-02730

vs.

Respondent
Citicorp Investment Services

Hearing Site: San Francisco, 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 Everest K Y Wong (“Claimant”): Chelsea Masters, Esq., HLBS Law, Westminster, Colorado.

For Respondent Citicorp Investment Services (“Respondent”): Adam Kauff, Esq., Kauff Laton Miller LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 21, 2020.
Claimant signed the Submission Agreement: August 21, 2020.

Statement of Answer filed by Respondent on or about: October 20, 2020.
Respondent signed the Submission Agreement: October 28, 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:

1. Expungement of Occurrence Number 1302189 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 1302189 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 1302189;
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, Respondent requested that Claimant's request for damages from Respondent be denied its entirety.

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 16, 2021, Claimant filed a copy of the death record from the Lexis Nexis database reflecting that one of the customers in Occurrence Number 1302189, Ms. A, is deceased and therefore Claimant was unable to serve Ms. A with the Statement of Claim and notice of the date and time of the expungement hearing.

On February 16, 2021, Claimant advised that the other customer in Occurrence Number 1302189, Ms. S, was served with the Statement of Claim and notice of the date and time of the expungement hearing. On February 22, 2021, Claimant filed an Affidavit confirming that Ms. S was served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Ms. A and Ms. S are collectively referred to as "Customers."

The Arbitrator conducted a recorded, telephonic hearing on June 17, 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.

Ms. S did not participate in the expungement hearing. The Arbitrator found Ms. S 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 was unable to review the settlement documentation related to Occurrence Number 1302189. By letter dated May 28, 2021, Claimant advised that, despite diligent search,

the settlement documents were not available due to the age of the complaint. The Arbitrator reviewed the broker statement from Claimant's BrokerCheck® Report and considered the settlement amount. Having reviewed Claimant's BrokerCheck® Report and heard Claimant's testimony, the Arbitrator noted that Claimant did not contribute to the settlement amount. The Arbitrator also noted that the date of the settlement preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and Claimant's exhibits.

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 1302189 from registration records maintained by the CRD for Claimant Everest K Y Wong (CRD Number 3166711) with the understanding that, pursuant to Notice to Members 04-16, Claimant Everest K Y Wong 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 proved by a preponderance of evidence that the Customers' allegations were incorrect. Claimant testified persuasively that the failure to file the Customers' 1035 exchange within the financially favorable "window" was due to the following: the Customers' later start in the exchange process; the Customers' misinformation about the ownership of the annuities being exchanged; and Claimant's reliance on issuer of the annuities being exchanged, Hartford Life and Annuity Insurance Company's ("Hartford") promise to expand the window for the 1035 exchange, a promise which Hartford later reneged upon. As a result, the Customers incurred a negative market adjustment. Complainant unsuccessfully attempted to get compensation for the Customers and eventually advised them to file a complaint.

In respect to the Customers' claim that they suffered an adverse tax consequence in the 1035 exchange, Claimant testified persuasively that financial professionals are legally prohibited from giving tax advice to clients. Claimant testified credibly that he

advised the Customers in writing and orally during the exchange process that financial professionals do not give advice on the tax consequences of transactions.

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 11, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 17, 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

Ann Elizabeth Sarli

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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

Ann Elizabeth Sarli

Ann Elizabeth Sarli
Sole Public Arbitrator

07/06/2021

Signature Date

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July 07, 2021

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