

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Thomas Eric Reich

Case Number: 20-02733

vs.

Respondent
Kestra Investment Services, LLC

Hearing Site: Philadelphia, Pennsylvania

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 Thomas Eric Reich: Michael O’Gara, J.D. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Kestra Investment Services, LLC: Amanda Beck, Esq., D’Amura & Zaidman, PLLC, Austin, Texas.

CASE INFORMATION

Statement of Claim filed on or about: August 21, 2020.

Thomas Eric Reich signed the Submission Agreement: August 21, 2020.

Statement of Answer filed by Respondent on or about: October 12, 2020.

Kestra Investment Services, LLC signed the Submission Agreement: October 13, 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 and denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1707518; 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, Respondent requested that the Arbitrator make no award against Respondent and assess all fees to Claimant.

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 March 22, 2021, Claimant advised that the customers in Occurrence Number 1707518 (“Customers”) were served with a copy of the Statement of Claim, notice of the date and time of the expungement hearing and of their right to participate therein. On or about March 30, 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 the Customers were served with a copy of the Statement of Claim and notice of the date and time of the expungement hearing.

On or about March 28, 2021, one of the Customers involved in Occurrence Number 1707518 filed with FINRA Dispute Resolution Services an email, in which she stated her opposition to the request for expungement.

The Arbitrator conducted a recorded, telephonic hearing on May 6, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

Two of the Customers also participated in the expungement hearing and opposed the request for expungement. 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.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1707518, 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: Claimant’s Submission of Expungement Hearing Exhibits; settlement agreement; and Claimant’s credible 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 1707518 from registration records maintained by the CRD for Claimant Thomas Eric Reich (CRD Number 2842211) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Eric Reich 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 provided credible testimony and documentary evidence that the Customers and their Certified Public Accountants (“CPAs”) approached Claimant to assist the Customers in purchasing a Section 1031 Exchange Tenant-In-Common (“1031 TIC”). Claimant testified and submitted multiple documents signed by the Customers that outlined the risks associated with such a purchase. The purchase of the 1031 TIC given the Customers’ stated prior investment experience, net worth and stated objectives in the purchase were suitable. Claimant gave credible testimony of the due diligence in researching and explaining the investment to the Customers. There was no evidence that Claimant misrepresented the investment to the Customers. The investment met the objective of the Customers. A claim did not arise until after the market fell, and the Customers raised the issue of unsuitability and misrepresentation. Claimant did not participate or contribute to the settlement. There is no evidence of unsuitability or misrepresentation. Thus, Occurrence Number 1707518 on the Claimant’s BrokerCheck® Report should be expunged pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

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

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 21, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 6, 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

Diane Ciccone

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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

Diane Ciccone

Diane Ciccone
Sole Public Arbitrator

05/13/2021

Signature Date

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May 13, 2021

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