

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Damian Jude Dering

Case Number: 20-02736

vs.

Respondent
Eplanning Securities, Inc.

Hearing Site: Los Angeles, 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 Damian Jude Dering (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

Respondent Eplanning Securities, Inc. (“Respondent”) did not enter an appearance.

CASE INFORMATION

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

Respondent did not file a Statement of Answer or sign the Submission Agreement.

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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1598180 from Claimant’s CRD records pursuant to FINRA Rule 2080, as:
 - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment-related sales practice

- violation, forgery, theft, misappropriation, or conversion of funds; and/or
- c. the claim, allegation, or information is false;
 2. Compensatory damages in the amount of \$1.00 from Respondent; and
 3. Any and all other relief that the Arbitrator deems just and equitable.

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

Respondent did not file a Statement of Answer. The Claim Notification letter dated August 25, 2020 was sent to Respondent’s addresses shown from the CRD and the California Secretary of State records by regular mail and certified mail. All regular mail and certified mail deliveries were returned to FINRA Dispute Resolution Services. Respondent is a terminated member of FINRA.

The Claim Notification letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent failed to register for the DR Portal.

Although the Claim Notification letter was returned, the Arbitrator found that all reasonable efforts were made to serve Respondent. The Arbitrator determined that Respondent is, therefore, bound by the Arbitrator’s ruling and determination.

On April 13, 2021, Claimant advised that the customers in Occurrence Number 1598180 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing. On April 19, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on May 27, 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1598180, 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 Agreement; Statement of Claim; Claimant's BrokerCheck® Report; notice of no additional service addresses for Respondent; service history report; notice to the Customers; Claimant's exhibits; the settlement agreement; and Claimant's 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 1598180 from registration records maintained by the CRD for Claimant Damian Jude Dering (CRD Number 2854253) with the understanding that, pursuant to Notice to Members 04-16, Claimant Damian Jude Dering 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, 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:

Respondent is a previously registered securities broker-dealer that is not currently registered with FINRA and did not respond to this matter.

In 2011, the Customers filed a civil action in California Superior Court and named several parties involved in a complex estate planning and insurance case that began in 2006. Claimant was not named in the original suit but was added in an amended filing in 2012. The complaint alleged that Claimant, and others, made misrepresentations of tax-free revenue streams in connection with three insurance policies purchased by the Customers. The Customers sought significant compensatory damages.

Claimant was not involved in the selection or recommendation of the insurance policies at issue, this was done by others prior to Claimant's involvement with the Customers.

In 2014, Respondent settled with the Customers for approximately 10% of the original amount requested, and a nominal amount compared to the potential cost of arbitration or litigation. The decision to settle was made without consulting any of the other defendants in the case, including Claimant, and Claimant did not contribute to the settlement amount.

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: December 29, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 27, 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

Robert E. Jenks

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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

Robert E. Jenks

Robert E. Jenks
Sole Public Arbitrator

06/14/2021

Signature Date

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June 15, 2021

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