

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Dudley Smith

Case Number: 20-02760

vs.

Respondent
BBVA Securities, Inc.

Hearing Site: Birmingham, Alabama

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 Robert Dudley Smith: Preston Martin, Esq. and Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

Respondent BBVA Securities, Inc. (“BBVA”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: August 24, 2020.

Robert Dudley Smith signed the Submission Agreement: August 24, 2020.

BBVA Securities, Inc. did not file a Statement of Answer and did not 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: expungement of Occurrence Numbers 1140804, 1285966, 1662924, 1747600 and 1892271; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deemed 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 BBVA 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 BBVA did not file a Statement of Answer. The Arbitrator determined that Respondent was served with the Claim Notification letter dated August 24, 2020, and the Overdue Notice dated October 14, 2020. The Arbitrator also determined that Respondent was served with the Notification of Panel dated November 10, 2020.

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 BBVA failed to register for the DR Portal.

The Arbitrator determined that Respondent BBVA is, therefore, bound by the Panel’s ruling and determination.

On January 15, 2021, Claimant filed an Affirmation of Service confirming that the customers in Occurrence Numbers 1140804 (“Customer A”), 1285966 (“Customer B”), 1662924 (“Customer C”), 1747600 (“Customer D”) and 1892271 (“Customers E and F”), hereinafter collectively referred to as (the “Customers”), were served with the Statement of Claim and notice of the date and time of the expungement hearing. The Arbitrator noted that Claimant provided a death notice for Customer B, and that Customer C contacted Claimant and informed him that he would not be participating in the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on February 18, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing. During the hearing, Claimant’s counsel represented that he spoke with David S. Neel, Jr., the Chief of Operations/Chief Compliance Officer for Respondent who advised that Respondent would not be participating in this proceeding. Accordingly, the Arbitrator found that Respondent had notice of the expungement request and hearing.

The Customers also 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.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1747600, 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.

The Arbitrator noted that the disputes related to Occurrence Numbers 1140804, 1285966, 1662924 and 1892271 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: all documents presented by Claimant on the FINRA DR Portal, including but not limited to, the Statement of Claim with exhibits A, B, C, and D; Claimant's Affirmation of Service upon the Customers; Claimant's hearing exhibits 1-7; 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 Numbers 1140804, 1285966, 1662924, 1747600 and 1892271 from registration records maintained by the CRD for Claimant Robert Dudley Smith (CRD Number 1321602) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and,

The claim, allegation, or information is false.

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

As to Occurrence Number 1140804:

Customer A alleged that when she purchased a Variable Annuity in February 2001, "she was told that the investment was solid and that there would be a good return." She also alleged that "she was not advised or spoken to about the status of the account and was unhappy over market loss." Customer A alleged damages of \$50,000.00. The great preponderance of evidence presented showed that: (1) Claimant did advise Customer A of the status of the account including quarterly reports and follow up telephone conversations; (2) Claimant testified that he did not, and was prohibited by law from, making any predictions on returns,

and that Customer A knew this; (3) Claimant advised Customer A not to sell the Annuity as it was a long-term investment and Customer A sold the Annuity when she was no longer Claimant's client; (4) Claimant stated that the investment in the Annuity was a good investment and appropriate for Customer A's goals; and (5) Claimant stated that any loss incurred by Customer A was not due to any wrongdoing on the part of Claimant. Claimant's employer investigated Customer A's complaint and denied it. Customer A took no further action. The Arbitrator finds that Customer A's allegations and version of events are not supported by the evidence, and therefore, factually impossible and false. For these reasons, expungement of Claimant's record of this Occurrence is appropriate.

As to Occurrence Number 1285966:

Customer B stated that "the Annuity surrender was mishandled...The surrender generated a tax liability for the customer." Customer B claimed damages of \$25,000.00. Claimant testified that Customer B was an experienced bond buyer who had sold the Annuity to obtain a greater return on his investment by buying U.S. bonds for more income. Claimant testified that Customer B incurred no surrender fee in the sale of the Annuity and that Customer B knew of the tax liability for said sale, also that the sale was done pursuant to Customer B's instructions and order. Claimant's employer reviewed Customer B's complaint and requested additional information on the complaint from Customer B's attorney. To date, there has been no response from Customer B or his attorney. Customer B has taken no further action in this matter. The arbitrator finds that Customer B's version of events is not credible, not supported by the evidence, and therefore, factually impossible and false. For these reasons, expungement is appropriate.

As to Occurrence Number 1662924:

"Customer C, the son of a deceased customer, complained because it was ultimately determined that he was not a beneficiary of his deceased Mother's IRA. His mother had changed her named beneficiaries multiple times. The representative inadvertently advised Customer C that he was a beneficiary and established beneficiary IRA on his behalf. Customer C complained regarding the confusion,..." Customer C did not claim any amount of damages, but Claimant's employer estimated them in excess of \$5,000.00. Claimant testified that when notified of the mother's death, he checked with the mutual fund regarding the beneficiaries and acted on that information to distribute the IRA funds, opening a beneficiary account for each person. The mutual fund later informed Claimant that the mother had changed her beneficiaries before her death leaving the son out. The change had not been processed because the mother had not completed the change form by checking her marital status and the mutual fund was awaiting the corrected form. However, the mutual fund company decided that the item requested was not material and accepted the original change form leaving the son out. Claimant's employer investigated Customer C's complaint and denied it. Customer C took no further action. Claimant testified that he acted in good faith based on the mutual fund's information and that Customer C suffered no harm except the disappointment that his mother did not leave him a share of her IRA. The evidence shows that Claimant acted properly, in accordance with the information he was given by the mutual fund and is not responsible for the mother changing her beneficiaries or the son's disappointment. The evidence also shows no damage to Customer C and no wrongdoing on the part of Claimant. The Arbitrator finds Customer C's claims to be false and clearly erroneous and that Claimant should be granted expungement.

As to Occurrence Number 1747600:

Customer D alleged that "in 2013 the FA used money from her bank account to purchase an annuity without her prior authorization." Customer D sought damages in excess of \$5,000.00. Claimant's employer, on discovery of the purchase made in error, immediately returned the purchase funds with interest to Customer D. Customer D later filed a lawsuit in State Court against Claimant's employer. Customer D's lawsuit was settled by Claimant's employer who stated that "The annuity trade in question, which was submitted by mistake, was reversed and the money was returned to her bank account. Without admitting any liability, the firm settled the matter for a fraction of the requested damages to avoid further arbitration." Claimant did not sign the Settlement Agreement, did not contribute any money thereto, and was not a named party in Customer D's lawsuit. The Arbitrator read the Settlement Agreement, and considered the amounts paid to any party and considered the relevant terms and conditions of settlement. Evidence was presented at the hearing that led the Arbitrator to believe that Claimant was not involved in the alleged sales practice violation, misappropriation, or conversion of funds that was the subject of Customer D's complaint. Claimant testified that Customer D, over 90 years of age, had been interested in the purchase of an annuity. Claimant met Customer D at her house and reviewed the annuity with her and advised her that the purchase of the annuity was not in her best interest. Customer agreed and didn't sign the purchase papers. Unknown to Claimant, the branch banker with the mistaken belief that Customer D signed the purchase papers, withdrew the purchase money from Customer D's account and purchased the annuity. When the mistake was discovered, the annuity was cancelled and Customer D had her money returned with interest. Customer D later sued the Claimant's employer in state court, which settled to avoid arbitration. Customer D was fully reimbursed by Claimant's employer on learning of the mistake and obtained a fraction of the requested damages from Claimant's employer in settlement of her claim. Claimant testified that his employer after its investigation of Customer D's complaint found that Claimant never breached any of his employer's protocols and had committed no wrongdoing. The evidence presented at the expungement hearing led the Arbitrator to believe that Customer D's complaint was false and that the Claimant was not involved in the alleged sales practice violation, misappropriation, or conversion of funds that was the subject of the filing of the complaint by Customer D. Therefore, expungement is granted.

As to Occurrence Number 1892271:

Customers E and F alleged that "the sub-accounts in the investment were not appropriate." No damages were alleged, but Claimant's employer believed that a good-faith determination indicated losses greater than \$5,000.00. Claimant's employer investigated the claim and denied it, sending Customers E and F a letter explaining its decision. Customers E and F took no further action. Claimant testified that Customer E was an experienced investor and that Customers E and F had chosen the sub-accounts, also that this variable annuity had the Death Benefit increase from \$50,000.00 to \$58,000.00 and was a suitable investment. The sub-accounts were affected by market conditions outside the control of Claimant. The Arbitrator finds that Customers E and F's complaint is not supported by the evidence and is clearly erroneous and false. Expungement of Claimant's record is appropriate.

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: December 9, 2020 1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing: February 18, 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

Michael J. Ahlstrom

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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

Michael J. Ahlstrom

Michael J. Ahlstrom
Sole Public Arbitrator

02/25/2021

Signature Date

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.

February 25, 2021

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