

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Anthony Reilly

Case Number: 20-02771

vs.

Respondent
WestPark Capital, 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 John Anthony Reilly (“Claimant”): Kurt Zimmerman, Esq., HLBS Law, Westminster, Colorado.

For Respondent WestPark Capital, Inc. (“Respondent”): Julie E. Kamps, Esq., WestPark Capital, Inc., Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: August 24, 2020.
Claimant signed the Submission Agreement: August 24, 2020.

Statement of Answer filed by Respondent on or about: October 16, 2020.
Respondent signed the Submission Agreement: October 16, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2010291 from his 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 2010291 from his CRD records pursuant to FINRA Rule 2080(b)(1)(B), as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of Occurrence Number 2010291 from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
4. Deletion of all disclosure reporting pages accompanying customer dispute Occurrence Number 2010291;
5. Compensatory damages in the amount of \$1.00 from Respondent; and
6. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Denial of Claimant's request for damages; and
2. Any arbitration fees be borne by Claimant consistent with FINRA rules.

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 9, 2021, Claimant filed an Affidavit confirming that the customer in Occurrence Number 2010291 ("Customer") was 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 March 18, 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.

The Customer did not participate in the expungement hearing. The Customer submitted an email on February 9, 2021, to express that he opposed Claimant's request for expungement.

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 2010291, 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 pleadings; Claimant's exhibits; Respondent's pleadings; Claimant's post-

hearing submissions; the Customer's response to Claimant's expungement request dated February 9, 2021; and the settlement agreement.

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 2010291 from registration records maintained by the CRD for Claimant John Anthony Reilly (CRD Number 870804) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Anthony Reilly 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 finding of fact:

The claim, allegation, or information is false.

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

The Customer submitted an email to FINRA on February 9, 2021, stating that he did oppose the expungement and outlined his reasons for same, including, but not limited to, Claimant's inaccurate statements regarding his age and liquid savings amount, his texts urging him to liquidate his investment, and Claimant's alleged statement that this was the best investment he had ever seen and that in two years he would be on an island sipping margaritas. However, there was not a preponderance of evidence showing this alleged misrepresentation and unsuitability.

While employed at Respondent, Claimant was an investment banker dealing only with institutional investors and not a retail broker. In August 2017, Claimant began working with the Customer on a deal involving the financing of extended stay hotels. Over the course of their relationship, Claimant and the Customer would talk a few times a week regarding the financing of the project.

Claimant testified that the private placement investment related to Occurrence Number 2010291 ("Tapinator Offer") came on the table at Respondent's weekly meeting on or about December 2017. The Tapinator Offer involved the video game industry, which Claimant knew nothing about. Claimant sought out advice from the Customer as a subject matter expert. The Customer told Claimant the issues compared to two other companies and asked how he could get involved. Claimant sent the information to the Customer. Claimant did not solicit the Customer's participation. At the time, the Customer was engaged in naked options trading, which is highly risky, and in Claimant's opinion,

even riskier than the Tapinator Offer. Claimant never made any guarantees to the Customer regarding this investment and, in fact, told him he might not be accepted to participate. Claimant also told the Customer that manipulation could be an issue due to the low volume of shares trading on a daily basis. Claimant also informed the Customer that Tapinator, Inc. (“Tapinator”) had to file a statement with the Securities and Exchange Commission by April 2018, and, following a 30-45 day review and approval, the shares would be freely tradeable. After the Customer conducted his own research, he informed Claimant that he wanted to personally invest in the Tapinator Offer because Tapinator stock was valued at \$0.68 per share at that time, and the Customer could own the same stock through the Tapinator Offer for \$0.12 per share, with a warrant that was exercisable at \$0.15 per share. According to Claimant, this difference in share price was what he was referring to in a certain email to the Customer where Claimant suggested the Customer’s investment would immediately be worth six times its initial amount.

The Customer filled out an investment questionnaire for the Tapinator Offer (“Investment Questionnaire”), which stated that he had a large income and net worth, and two to five years investment experience in margins, options and private placements. The Investment Questionnaire clearly stated that the securities offered were speculative, involved a high degree of risk and should not be purchased by anyone who could not afford to lose their entire investment. Claimant disclosed that this was a risky investment and provided the Customer with all of the necessary paperwork, which the Customer signed. The Customer stated in an email that he was more than willing to take a risk with respect to the Tapinator Offer’s susceptibility to extreme volatility and manipulation given that he would receive a better understanding of how and when he would be able to sell his shares. Further, the Customer had to qualify in order to participate in the Tapinator Offer.

In May 2018, Tapinator’s stock price dropped to \$0.06 per share, at which time the Customer told Claimant that he wanted his money back or he would sue. Tapinator stock eventually increased to 200 times that value.

For the reasons stated above, the Arbitrator grants expungement pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false. Additionally, this expungement would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements. This occurrence has harmed Claimant because he has been required to disclose it and it is available to the public, therefore, its expungement will more accurately represent Claimant’s record.

Claimant did not participate in the negotiation of the settlement nor did he contribute to it. He had already voluntarily resigned from Respondent before the settlement took place, about a year after the Customer filed his complaint. Claimant pointed out that the settlement was not for the total amount and that Respondent had filed a counter claim against the Customer. Although Claimant has a number of judgments and liens, a bankruptcy, a regulatory event, and employment separation on his BrokerCheck Report, this is the only customer dispute. The employment separation back in 1989 appears to have involved a fraudulent rare coin investment, that ultimately for which Claimant had no knowledge of or liability.

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 21, 2020	1 session	

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

Constance Ellen Boukidis

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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

Constance Ellen Boukidis

Constance Ellen Boukidis
Sole Public Arbitrator

04/16/2021

Signature Date

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April 16, 2021

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