

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Christopher Cort

Case Number: 20-02777

vs.

Respondents
Oppenheimer & Co., Inc.
Josephthal & Co., Inc.

Hearing Site: Jersey City, New Jersey

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. Members

REPRESENTATION OF PARTIES

For Claimant Christopher Cort: Dochter Kennedy, MBA, J.D., and Frances Menzer, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondents Oppenheimer & Co., Inc. and Josephthal & Co., Inc.: Nicola Anne Murphy, Esq., Oppenheimer & Co. Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2020.
Christopher Cort signed the Submission Agreement: August 25, 2020.

Joint Statement of Answer filed by Respondents on or about: November 12, 2020.
Oppenheimer & Co., Inc. signed the Submission Agreement: November 13, 2020.
Josephthal & Co., Inc. 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”).

In the Joint Statement of Answer, Respondents denied the allegations made in the Statement of Claim but did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 986479 and 1136513; compensatory damages in the amount of \$1.00 from Respondents; and any and all other relief that the Arbitrator deems just and equitable.

In the Joint Statement of Answer, Respondents requested that Claimant's request for \$1.00 in compensatory damages be denied.

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 Josephthal & Co., Inc. did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

On February 23, 2021, Claimant advised that one of the customers ("Mrs. B") in Occurrence Numbers 986479 and 1136513 was served with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant further advised that the other customer ("Mr. B") in Occurrence Numbers 986479 and 1136513 is deceased. On March 1, 2021, Claimant filed an Affidavit confirming that Mrs. B 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 July 12, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents did not participate in the expungement hearing and did not oppose the request for expungement.

Mrs. B, the surviving customer in Occurrence Numbers 986479 and 1136513, did not participate in the expungement hearing. The Arbitrator found that Mrs. B 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 noted that the dispute related to Occurrence Number 986479 was not settled and, therefore, there was no settlement document to review.

The Arbitrator did not review the settlement documentation related to Occurrence Number 1136513. The Arbitrator noted that, upon diligent search, the settlement document could not be produced due to the age of the complaint. The Arbitrator considered the amount of payments made to any party to the settlement and noted that, based on Claimant's testimony, the settlement was not conditioned on any party to the settlement not opposing the

expungement request. The Arbitrator also noted that Claimant contributed to the settlement amount. However, the Arbitrator found that expungement is still warranted as Claimant's contribution to the settlement was required by the firm.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, Claimant's testimony, Claimant's BrokerCheck® Report, and Claimant's proof of service on the customers.

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 986479 and 1136513 from registration records maintained by the CRD for Claimant Christopher Cort (CRD Number 2274905) with the understanding that, pursuant to Notice to Members 04-16, Claimant Christopher Cort 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; and the claim, allegation, or information is false.

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

The customers, Mr. and Mrs. B, became clients of Claimant in or around 1998. Their investment objective was trading and speculation with a high-risk tolerance and long-term investment horizon. The customers established a non-discretionary fee-based account. Based on the customers' investment profile and objectives, Claimant recommended a variety of diverse investments as part of a diversified balanced portfolio, including a position in Microsoft. At the time and currently, Microsoft was and is a world leader in technology whose equity could be considered a 'blue chip.' Between 1998 and January 2001, Mr. B frequently traded in the account, often trading on margin. During that time, Mr. B made 72 withdrawals from the account in order to pay gambling debts. These withdrawals were not disclosed to his family. In January 2001, the customers' daughter alleged that Claimant made unauthorized trades in the account. The firm investigated the complaint and denied it as being without merit. In April 2002, the customers filed a FINRA arbitration alleging churning, unsuitability, and unauthorized trading. The matter was settled for a third of the amount claimed, with Claimant contributing to the settlement amount as required by the firm.

These occurrences should be expunged on the grounds that they are clearly erroneous, false, or both under Rule 2080. There was no churning in this fee based non-discretionary account, nor was there any unauthorized trading. Indeed, Mr. B. signed and returned activity letters to the firm. Microsoft was an entirely suitable investment for the customers. Additionally, the daughter's complaint to the NYSE was dismissed without any action being taken against Claimant. Claimant also testified as to the negative impact this disclosure has had on his business and development efforts. The interests of consumer protection and awareness being in no way negatively implicated, the Arbitrator recommends the above occurrences be expunged from Claimant's CRD record pursuant to Rule 2080(b)(1)(A-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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Oppenheimer & Co., Inc. and Josephthal & Co., Inc. are each 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 Pre-hearing Conference: February 2, 2021 1 session	= \$	50.00
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One (1) hearing session on expungement request @ \$50.00/session Hearing Date: July 12, 2021 1 session	= \$	50.00
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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

Robert E. Anderson

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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. Anderson

Robert E. Anderson
Sole Public Arbitrator

07/20/2021

Signature Date

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July 21, 2021

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