

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Jacob C. Allen

Case Number: 20-02781

vs.

Respondent  
Banc of America Investment Services, Inc.

Hearing Site: St. Louis, Missouri

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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 Jacob C. Allen: Michael O’Gara, J.D. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Banc of America Investment Services, Inc.: Laura A. Pizzitola, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: August 25, 2020.  
Jacob C. Allen signed the Submission Agreement: August 25, 2020.

Statement of Answer filed by Respondent on or about: October 6, 2020.  
Banc of America Investment Services Inc. signed the Submission Agreement: October 6, 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 asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1031410 and 1138476; 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 objected to Claimant's request for \$1.00 in compensatory damages.

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 April 5, 2021, Claimant advised that the customers in Occurrence Numbers 1031410 and 1138476 ("Customer A and Customer B") were served with a copy of the Statement of Claim, notice of the date and time of the expungement hearing and of the Customers' right to participate therein. On or about April 12, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with proof of service via FedEx upon the 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.

The Arbitrator conducted a recorded, telephonic hearing on May 11, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing. On or about May 11, 2021, Respondent filed with FINRA Dispute Resolution Services a notice that Respondent reiterated its position as stated in the Statement of Answer, that Respondent took no position on Claimant's request for expungement.

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 occurrences in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1031410 was not settled and, therefore, there was no settlement document to review.

On or about April 21, 2021, Claimant filed with FINRA Dispute Resolution Services a notice representing that he was unable to produce the Settlement Agreement ("Settlement Agreement") in connection with Occurrence Number 1138476 because Respondent confirmed in writing that it had no documents, including the Settlement Agreement, responsive to Claimant's discovery requests. During the hearing, Claimant addressed the terms of the Settlement Agreement in his testimony, which the Arbitrator deemed to be sufficient. The Arbitrator determined that no further steps were required in this regard.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; documents required prior to making financial investment into a security, annuity or to go on margin in an account; and Respondent's notice that it would not be present at the expungement hearing.

## 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 1031410 and 1138476 from registration records maintained by the CRD for Claimant Jacob C. Allen (CRD Number 2596713) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jacob C. Allen 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:

### Occurrence Number 1031410

Customer A purchased an annuity in May of 2001 and requested to return it in August of 2001. Without notice to Claimant, Customer A transferred out the account and then complained to Respondent's compliance department seeking return of her funds. Customer A's complaint was investigated and denied. No further action took place. Customer A alleged that risk tolerance, diversification and volatility of market were not discussed with her at time of purchase. The written documentation and signature of Customer A required by the issuer and by Respondent to place the purchase is contrary to those assertions, as was testimony from Claimant. The Arbitrator found the claim is false.

### Occurrence Number 1138476

Customer B approached Claimant, employed at a bank, to invest in specific securities that Customer B selected. Customer B was advised not to concentrate in a single market group or security, but Customer B did not accept Claimant's recommendations to diversify. Customer B then invested more funds into the technology investments (again against Claimant's recommendation) and ended up on margin due to market decline. The unsolicited transactions were approved by compliance, and all of Customer B's investments were unsolicited. Going on margin was Customer B's request and suggestion, not Claimant's. Customer B waited three years to file a claim with FINRA Dispute Resolution Services. Respondent settled the claim for 1/3 of the requested damages. Claimant was not asked to contribute to the settlement. The Settlement Agreement was not able to be located by the parties. Customer B asserted that Claimant

recommended unsuitable investments and use of margin. The Arbitrator found that these are false.

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 18, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: May 11, 2021 1 session

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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**

Tracy L. Allen

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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**

***Tracy L. Allen***

Tracy L. Allen  
Sole Public Arbitrator

**05/20/2021**

Signature Date

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May 20, 2021

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