

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Kristopher Scott Flammang

Case Number: 20-02786

vs.

Respondent

Securities America, Inc.

Hearing Site: Tampa, Florida

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 Kristopher Scott Flammang: Harris Freedman, Esq. and Zachary Morse, Esq., of Counsel, HLBS Law, Westminster, Colorado.

For Respondent Securities America, Inc.: Tyler Schubauer, Esq., Securities America, Inc., La Vista, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: August 25, 2020.

Kristopher Scott Flammang signed the Submission Agreement: August 25, 2020.

Statement of Answer filed by Respondent on or about: September 17, 2020.

Securities America, Inc. signed the Submission Agreement: September 17, 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: expungement of Occurrence Number 1633924; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for compensatory damages and that all forum fees be assessed to Claimant.

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 February 26, 2021, Claimant sent via Federal Express to one of the customers involved in Occurrence Number 1633924 ("Customer A") a copy of the Statement of Claim and notice of the date and time of the expungement hearing. On March 1, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service confirming that Customer A was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On or about March 1, 2021, Claimant filed with FINRA Dispute Resolution Services, an obituary reflecting that the other underlying customer involved in Occurrence Number 1633924 ("Customer B") passed away on July 15, 2014.

The Arbitrator conducted a recorded hearing by videoconference on April 6, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

Customer A did not participate in the expungement hearing. The Arbitrator found that Customer A had notice of the expungement request and hearing. Based on the review of the obituary for Customer B, the Arbitrator found that service was not possible upon that customer.

The Arbitrator reviewed Claimant's BrokerCheck® Report and 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 1633924, 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, including: Claimant's uncontroverted testimony; Customer A's IRA Application; Customer A's Alternative Investment Purchase Acknowledgement; Customer A's Subscription Agreement; Customer B's New Account Form; Customer B's Subscription Agreement; Customer B's Alternative Investment Purchase Acknowledgement; and Customers A's and B's Settlement Agreements.

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 1633924 from registration records maintained by the CRD for Claimant Kristopher Scott Flammang (CRD Number 3189194) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kristopher Scott Flammang 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.

The claim, allegation, or information is false.

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

Claimant’s uncontroverted testimony leads the Arbitrator to believe Claimant was professional, thorough, and careful in recommending the Behringer Harvard REIT I investment to the underlying customers. This sworn-in testimony is supported by the documentary evidence in Exhibits 1 through 8.

The customers had similar investments in their 401K’s, many years of investing experience – twelve to thirty-one years depending on the product. Their investment objectives included growth and moderate risk. They each signed IRA Applications, Alternative Investment Purchase Acknowledgements and Behringer Harvard REIT I Subscription documents that reflected and confirmed their goals, risk tolerances, investment time horizons, cash requirements, risks and percentages.

Claimant met with each customer three to four times initially, explained all aspects and risks of the Real Estate Investment Trusts (“REIT”) at issue, then conducted a comprehensive review every six to seven months throughout; they spoke by telephone as necessary. The customers received monthly and quarterly statements and not once complained to Claimant.

Importantly, the REIT investment, which Claimant and the many documents acknowledged by the customers clearly explained, represented a small, reasonable percentage of their overall portfolios –9.3 percent to 17 percent, respectively—and less than the broker-dealer’s 20 percent maximum allowable.

While the REIT investment was relatively illiquid, also acknowledged by both customers, their investment time horizons were over ten years, thereby making the REIT a suitable investment and consistent with their investing parameters. As evidenced in the

customers' Subscription Agreements, and Customer B's New Account Form, both customers acknowledged in writing "there is no public market for this investment."

Claimant had thirty to thirty-five other clients who held the same REIT and none submitted complaints. The underlying matter is the only complaint Claimant has ever received. The settlement of the underlying \$175,000.00 claim was for a fraction of the relief requested, was entirely paid by Respondent and Claimant did not participate in any aspect of the settlement talks, was not asked to pay a portion, and did not do so.

Claimant, accompanied by the above-cited acknowledged documents, provided the customers reasonable notice of the risks and parameters of the REIT, after carefully understanding their needs. In addition to the time-suitability addressed above, the REIT was suitable for both and a small part of their diversified portfolios. Both portfolios included sufficient liquid investments.

Thus, the customers' claims are deemed to be clearly erroneous or clearly 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 30, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: April 6, 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

Karl A. Vogeler, III

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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

Karl A. Vogeler, III

Karl A. Vogeler, III
Sole Public Arbitrator

04/13/2021

Signature Date

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April 13, 2021

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