

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jennifer Anne Johnston

Case Number: 20-02788

vs.

Respondent
Banc of America Investment Services Inc.

Hearing Site: San Francisco, 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 Jennifer Anne Johnston (“Claimant”): Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

For Respondent Banc of America Investment Services Inc. (“Respondent”): Patrick J. Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Statement of Answer filed by Respondent on or about: November 16, 2020.
Respondent signed the Submission Agreement: November 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 took no position on Claimant’s expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1077974 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
 - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or;
 - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
 - c. the claim, allegation, or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent opposed Claimant's request for damages.

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 April 30, 2021, Claimant filed a copy of the death record from the Lexis Nexis database reflecting that the customer involved in Occurrence Number 1077974 ("Customer") is deceased and therefore Claimant was unable to serve the Customer with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on June 3, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement 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 occurrence in the CRD.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1077974. The Arbitrator noted that, upon diligent search, the settlement documents 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, based upon Claimant's testimony, noted that the settlement was not conditioned upon any party to the settlement not opposing the expungement request. The Arbitrator noted that Claimant contributed to the settlement amount. The Arbitrator recommends expungement of this occurrence as Claimant's contribution to the settlement was nominal in light of the potential cost of arbitration and litigation. The Arbitrator also noted that the date of the settlement preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Claimant's BrokerCheck® Report; 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 Number 1077974 from registration records maintained by the CRD for Claimant Jennifer Anne Johnston (CRD Number 2413808) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jennifer Anne Johnston 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:

The Customer alleges that she thought she was buying bonds, not a mutual fund. The Customer's account was a non-discretionary account. The Customer received at least four to five monthly account statements, and a trade confirmation at the time of the transaction (early 2002) that clearly described the instrument purchased as a closed-end fund. The differences between bonds, mutual funds, and closed-end funds were clearly explained to the Customer at least three times. The investment was suitable for the Customer's goal of conservative/moderate risk profile with a yield greater than a certificate deposit (CD), and the opportunity for growth and income. The Customer stated she had a five-year horizon for this investment, but when the investment declined in less than six months, she chose to sell.

On May 6, 2002, the Customer filed a complaint with Respondent. On June 11, 2002, a settlement was reached with the Customer for half of the losses incurred on the investment. There was no contingency involved and, as is understandable, Claimant agreed to the settlement amount to avoid more costly arbitration costs. Respondent agreed to let Claimant repay the settlement amount over time, and when a new manager took over, Claimant's balance was forgiven after only two payments.

As indicated above, the Customer's complaint was false and erroneous. Therefore, the Arbitrator recommends expungement of Occurrence Number 1077974 from Claimant's CRD records.

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: January 11, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing: June 3, 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

Michael Lancaster Garcia

-

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 Lancaster Garcia

Michael Lancaster Garcia
Sole Public Arbitrator

06/22/2021

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.

June 23, 2021

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