

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Daniel Albert Neil

Case Number: 20-02794

vs.

Respondent
Securities America, Inc.

Hearing Site: San Diego, 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 Daniel Albert Neil (“Claimant”): Frances Menzer, Esq. and Josh Miller, Esq., HLBS Law, Westminster, Colorado.

For Respondent Securities America, Inc. (“Respondent”): Chad E. Weaver, Esq. and Tyler Jacobs, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

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: October 20, 2021.

Respondent signed the Submission Agreement: October 21, 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 1514078 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 1514078 from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1514078;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Claimant's request for \$1.00 in compensatory damages be denied;
2. Claimant's request for any other damages against Respondent be denied; and
3. All forum fees in connection with the hearings on this expungement request be assessed against Claimant.

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 12, 2021, Claimant advised that the customers in Occurrence Number 1514078 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On April 19, 2021, Claimant filed an Affidavit confirming that the Customers were 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 May 17, 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 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1514078, 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: Submission Agreements; Statement of Claim; Claimant's proofs of service on the Customers; the settlement agreement; Claimant's BrokerCheck® Report; Claimant's exhibits; Statement of Answer; 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 1514078 from registration records maintained by the CRD for Claimant Daniel Albert Neil (CRD Number 4292619) with the understanding that, pursuant to Notice to Members 04-16, Claimant Daniel Albert Neil 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

On March 25, 2004, the Customers became clients of Claimant, seeking management of their investment portfolio and the construction of a retirement plan. The Customers planned to work between eight and ten more years before retiring.

The Customers' investment objective was growth with moderate risk tolerance. Claimant discussed with the Customers the structure of MedCap's business, as well as the risks and rewards that accompanied the private placement investment. Claimant made sure the Customers understood there was no outside tradable market for the MedCap notes and, therefore, the MedCap notes had limited liquidity.

The Customers affirmed their understanding of the MedCap notes in writing, in multiple documents, including the MedCap notes application, the MedCap notes subscription agreement, the National Financial Services Alternative Investments Addendum and Custody Agreement, and other MedCap notes offering documents.

In 2008 and 2009, the President and Chief Operating Officer of Medcap misappropriated funds invested with one of the MedCap series of deals and used the money to make payments to prior investors and to pay himself administrative fees, according to a statement from the U.S. Attorney's office for the central district of California. According to the U.S Attorney's statement, he defrauded more than 700 investors of nearly \$49 million through MedCap. Dozens of independent broker-dealers had sold MedCap notes and, thus, had wiped out millions of dollars in investor cash.

In July of 2009, the U.S. Securities and Exchange Commission ("SEC") filed an action against MedCap alleging fraud and MedCap was found to be a Ponzi scheme. Ultimately, the SEC took control of MedCap, placing the company in receivership.

On May 10, 2010, the Customers' joined other injured MedCap investors and filed an arbitration claim against Respondent seeking damages for losses sustained in connection with the MedCap Ponzi scheme. Claimant was not a named Respondent in the underlying arbitration claim. The Customers' claim was part of a global settlement by Respondent, resulting from an SEC investigation.

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 15, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: May 17, 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

Robert E. Jenks

-

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. Jenks

Robert E. Jenks
Sole Public Arbitrator

06/09/2021

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 10, 2021

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