

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Garland Richard Homes, Jr.

Case Number: 20-02795

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith
Incorporated

Hearing Site: Raleigh, North Carolina

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 Garland Richard Homes, Jr.: Chelsea Masters and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Joel M. Everest, Esq., Of Counsel, Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Garland Richard Homes, Jr. signed the Submission Agreement: August 25, 2020.

Statement of Answer filed by Respondent on or about: October 7, 2020.

Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: October 5, 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 Number 2073640; 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 2, 2021 and June 15, 2021, Claimant advised that the customer in Occurrence Number 2073640 ("Customer") was served with a copy of the Statement of Claim, notice of the date and time of the expungement hearing and of the Customer's right to participate therein. On or about April 5, 2021 and June 21, 2021, Claimant filed with FINRA Dispute Resolution Services Affidavits of Service, along with proof of service via FedEx upon the Customer, advising that the Customer was 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 July 22, 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, took no position on the request for expungement.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 noted that the Customer's claim was denied after investigation by Respondent, the Customer had not filed an arbitration claim with FINRA Dispute Resolution Services, and the dispute related to Occurrence Number 2073640 was not settled. Therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: testimony of Claimant; testimony of Claimant's business partner at Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated; and Claimant's Exhibits 1 through 13.

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 2073640 from registration records maintained by the CRD for Claimant Garland Richard Homes, Jr. (CRD Number 714042) with the understanding that, pursuant to Notice to Members 04-16, Claimant Garland Richard Homes, Jr. 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:

Testimonial evidence offered by Claimant and his business partner at Merrill Lynch, along with documentary evidence, showed that the complaining Customer had communicated on or about February 12, 2021, his concerns about his investment strategy with regard to the possibility of a widespread Covid-19 outbreak in the United States. Their testimony and the documentary evidence, however, clearly show that a decision, to which the Customer agreed, was made to "stay the course, and monitor the portfolio performance." More specifically, Claimant's Exhibits 1 & 2 document email exchanges with the Customer on February 12, 2020, indicating that all had agreed, as above, "to stay the course," and to which the Customer replied, "Yes, sir!" without challenging the agreement as stated. Together, the testimony offered and the documentation of the Customer's approval in his reply show that his claim that Claimant failed to follow his instructions is 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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 11, 2021, postponement requested by Claimant = \$ 50.00

Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fees to Claimant.

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 22, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: July 22, 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

Richard James Igou

-

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

Richard James Igou

Richard James Igou
Sole Public Arbitrator

07/30/2021

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.

July 30, 2021

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