

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kenneth Frederick Hill

Case Number: 20-02797

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

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 Kenneth Frederick Hill: Dochter Kennedy, MBA, J.D. and Chelsea Masters, J.D., AdvisorLaw, LLC, Westmintser, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: Laura A. Pizzitola, Esq. and Joel Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2020.

Kenneth Frederick Hill signed the Submission Agreement: August 26, 2020.

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

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: October 5, 2020.

Amended Statement of Claim filed on or about: March 4, 2022.

CASE SUMMARY

In the Statement of Claim, as amended, 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.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested: expungement of Occurrence Number 2073060; 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 objected to Claimant's request for \$1.00 in compensatory damages.

During the June 14, 2021 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 May 10, 2021, Claimant filed an Affidavit confirming that the customer in Occurrence Number 2073060 ("Customer") was served on May 4, 2021, with the Statement of Claim and notice of the date and time of the June 14, 2021, expungement hearing.

On February 7, 2022, Claimant file a Motion to Amend the Statement of Claim in which he sought to amend the factual background section, add an argument section, and further specify the expungement relief requested in the Statement of Claim. Respondent did not file a Response to Claimant's Motion to Amend the Statement of Claim. On March 4, 2022, the Arbitrator issued an Order in which he granted Claimant's Motion.

On February 28, 2022, Claimant filed a copy of an email correspondence to the Customer which notified the Customer of the date and time of the March 3, 2022, expungement hearing.

The Arbitrator conducted recorded, telephonic hearings on June 14, 2021, and on March 3, 2022, 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 also participated in the expungement hearing and initially opposed the expungement request on the basis that he instructed Claimant to liquidate all his holdings and Claimant failed to do so. During the March 3, 2022 hearing, the Customer advised that he was no longer opposing Claimant's request for expungement indicating that as a longtime customer of Claimant, he wanted to put the matter behind him. The Customer did state, however, that he still had time under the FINRA rules to file a claim.

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 2073060, considered any 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 any settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's exhibits, the Customer's statement in opposition, and the sworn testimony of Claimant and his witness.

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 2073060 from registration records maintained by the CRD for Claimant Kenneth Frederick Hill (CRD Number 2338250) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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:

The Customer complaint was that Claimant did not follow his instructions to liquidate all of his holdings, allegedly made during a telephone conversation on February 12, 2020. The emails on that date sent between the Customer and Claimant do not indicate that request and confirm the customer's agreement to "stay the course." Furthermore, the lack of trade confirmations and the monthly statements the Customer received did not indicate any liquidations, and the complaint was made in May of 2020 after the market had dropped as a result of Coronavirus. Therefore, if the Customer had made a request to liquidate, he should have known it had not been done prior to the approximately two months between his alleged request and complaint.

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:

April 15, 2021 postponement requested by Claimant = \$ 50.00

Total Postponement Fee = \$ 50.00

The Arbitrator has assessed the entire postponement fee to Claimant.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

April 15, 2021, cancellation requested by Claimant = \$ 600.00

Total Last-Minute Cancellation Fee = \$ 600.00

The Arbitrator has assessed the entire last-minute cancellation fee 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 10, 2020 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$ 100.00
Hearings: June 14, 2021 1 session
March 3, 2022 1 session

Total Hearing Session Fees = \$ 150.00

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 S. Zaifert

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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

Richard S. Zaifert

Richard S. Zaifert
Sole Public Arbitrator

03/14/2022

Signature Date

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March 14, 2022

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