

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Andrew Joseph Fairchild

Case Number: 20-02801

vs.

Respondents

Cetera Advisors, LLC
Investors Capital Corp.

Hearing Site: Boca Raton, 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. Members

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Andrew Joseph Fairchild (“Claimant”): Zachary Hayes-Macaluso, J.D., FA Expungement, LLC, Denver, Colorado.

For Respondents Cetera Advisors, LLC (“Cetera”) and Investors Capital Corp. (“ICC”): David Feldstein, Esq., Cetera Financial Group, New York, New York.

CASE INFORMATION

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

Claimant signed the Submission Agreement: August 26, 2020.

Amended Statement of Claim filed on or about: October 13, 2020.

Claimant signed the Amended Submission Agreement: October 15, 2020.

Respondent Cetera did not file a Statement of Answer or sign the Submission Agreement.

Statement of Answer filed by Respondent ICC on or about: November 27, 2020.

Respondent ICC signed the Submission Agreement: October 16, 2020.

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 ICC did not oppose Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested: an award granting expungement of Occurrence Number 1451006 from Claimant's CRD Record pursuant to a finding that the claim, allegation, or information is false in accordance with FINRA Rule 2080(b)(1)(C); and an award of compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent ICC requested: a statement from the Chairperson on the issue of whether to order recommending that the customer complaint be expunged from Claimant's CRD Records in the form required by FINRA Rule 2080; denial of Claimant's request for \$1.00 in compensatory damages; and an order that all forum costs and fees 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 October 13, 2020, Claimant filed an Amended Statement of Claim, which added Respondent ICC, but otherwise made no changes to the relief requests.

On October 23, 2020, Claimant voluntarily withdrew with prejudice all claims against Respondent Cetera. Claimant stated that Respondent Cetera had been named in error, and that Respondent ICC was the correct Respondent. Therefore, the Arbitrator made no determination with respect to any relief requests against Respondent Cetera.

On June 10, 2021, Claimant advised that the customer in Occurrence Number 1451006 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On June 25, 2021, Respondent ICC submitted a letter stating they did not intend to appear at the expungement hearing on July 1, 2021.

The Arbitrator conducted a recorded, telephonic hearing on July 1, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent ICC did not participate in the expungement hearing.

The Customer also 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 dispute related to Occurrence Number 1451006 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and Exhibits C-1, C-2, C-3, and C-4.

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 1451006 from registration records maintained by the CRD for Claimant Andrew Joseph Fairchild (CRD Number 1959274) with the understanding that, pursuant to Notice to Members 04-16, Claimant Andrew Joseph Fairchild 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 began his relationship with Claimant in 2003. The transaction that gave rise to the Customer's complaint took place in the latter part of 2008. Claimant presented a set of exhibits, which were submitted through the FINRA DR Portal on or about June 11, 2021. Those exhibits have been admitted into the record. Claimant, after being duly sworn in, provided testimonial evidence which was determined to be credible evidence.

Exhibit C-1 is the BrokerCheck Report. Page seventeen (17) of that Report indicates the filing of the Customer's complaint on March 12, 2009. The complaint was related to the sudden drop in value of a recently purchased mutual fund from the Hartford Floating Rate Fund ("Hartford Fund"). Exhibit C-2 is the Customer's complaint, which is somewhat non-specific, but from the other evidence and the Claimant's testimony, it was clear that the complaint related to the Hartford Fund, which was originally purchased in September of 2008. The Customer's complaint alleged that the investment was unsuitable. Exhibit C-3 is Claimant's written response to the Customer's complaint. It was clear from that response that the Customer has a fairly complex investment portfolio and strategy, and the Hartford Fund

was a part of that overall strategy, and that the Customer was reasonably sophisticated in investing. Exhibit C-4 is a response from Respondent ICC which lays out the relevant facts surrounding the investment in question and explains in detail why the Customer's complaint was being denied. Most importantly, the letter makes reference to the second purchase of the same fund made by the Customer in November of 2008 after the value of the Customer's original purchase had declined significantly. Claimant's testimony explained that the Customer wanted to average his cost down in the investment, so he invested an additional sum.

Claimant's testimony further indicated that the Customer kept his relationship with Claimant for approximately six (6) to nine (9) months following the filing of the Customer's complaint, when the Customer apparently switched his account to a relative who was a broker. It was also Claimant's testimony that the Hartford Fund recovered all of the declines it had sustained, and more, while the Customer retained the account. The Customer apparently made a profit on his investment, which may explain his failure to pursue his claim any further than the written letter of March 12, 2009.

It is clear from all of the evidence presented that Claimant did not act in any inappropriate manner in this matter, that the claim of unsuitability was false since the Customer voluntarily purchased more of the Hartford Fund even after its decline in value, and the Customer did not pursue his claim beyond the writing of a letter. Based on these facts, it is the recommendation of the Chairperson that Occurrence Number 1451006 be expunged from Claimant's record as being false pursuant to FINRA Rule 2080(b)(1)(C).

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
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**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 firms that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as parties, the Respondents are each assessed the following:

Member Surcharge	= \$	150.00
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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: February 1, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: July 1, 2021	1 session	
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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

Mark A Bilawsky

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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

Mark A Bilawsky

Mark A Bilawsky
Sole Public Arbitrator

07/12/2021

Signature Date

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July 13, 2021

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