

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Edward Moriarty

Case Number: 20-02818

vs.

Respondent
National Planning Corporation

Hearing Site: St. Louis, Missouri

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 John Edward Moriarty (“Claimant”): Kurt Zimmerman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent National Planning Corporation (“Respondent”): Eric A. Michaels, Esq. and Piotr Krypciak, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: August 27, 2020.
Amended Statement of Claim filed on or about: December 4, 2020.
Claimant signed the Submission Agreement: August 27, 2020.

Statement of Answer filed on or about: September 17, 2020.
Respondent signed the Submission Agreement: September 16, 2020.

CASE SUMMARY

In the Amended 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.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested expungement of Occurrence Number

1975813, compensatory damages in the amount of \$1.00, 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 monetary relief and requested that Claimant bear all fees and costs.

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 December 4, 2020, Claimant filed a Motion to Amend the Statement of Claim ("Motion"). No response was filed. In an Order dated December 15, 2020, the Arbitrator granted the Motion.

On February 17, 2021, Claimant advised that the customers in Occurrence Number 1975813 (each a "Customer" and, collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On February 22, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Customers submitted a written statement, dated March 26, 2021, explaining the events related to Occurrence Number 1975813.

The Arbitrator conducted a recorded, telephonic hearing on April 1, 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 with respect to Claimant's request for expungement.

The Customers participated in the expungement hearing and opposed the expungement request.

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 1975813, 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: Claimant's testimony, Customer's testimony, and BrokerCheck® Report.

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 modifying the allegations stated in Item 4 under Occurrence Number 1975813 from registration records maintained by the CRD for Claimant John Edward Moriarty (CRD Number 2720704) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Edward Moriarty must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The Arbitrator recommends that Item 4 be modified to add the following language to the end of the existing statement: "After an arbitration hearing, the Arbitrator found the allegations of unsuitable investments and breach of fiduciary duty to be false."

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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

Claimant was not the financial advisor ("FA") for the Customers and he was not responsible for making or carrying out the recommendations the two operative FAs gave to the Customers. Claimant did not recommend unsuitable investments and did not breach a fiduciary duty to the Customers. The Arbitrator finds the allegations to be false and that Claimant was not involved in the disputed transactions. However, by his own testimony, as a result of Claimant's role in an Office of Supervisory Jurisdiction, he did review the two FAs' activities. The Arbitrator finds that Claimant failed to properly supervise the relationship of the FAs with the Customers, including the FAs' recommendations to the Customers.

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 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 @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: December 2, 2020 1 session

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

Tracy L. Allen

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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

Tracy L. Allen

Tracy L. Allen
Sole Public Arbitrator

04/09/2021

Signature Date

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April 09, 2021

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