

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Faith Read Xenos

Case Number: 20-02823

vs.

Respondent
MSEC, LLC

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. Member

REPRESENTATION OF PARTIES

For Claimant Faith Read Xenos: John Stewart, Esq., Baritz & Colman, LLP, New York, New York.

For Respondent MSEC, LLC: Anne Dorian, MSEC, LLC, Overland Park, Kansas.

CASE INFORMATION

Statement of Claim filed on or about: August 27, 2020.

Faith Read Xenos signed the Submission Agreement: August 27, 2020.

Statement of Answer filed by Respondent on or about: October 9, 2020.

MSEC, LLC did not sign the Submission Agreement.

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 supported Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2058904 and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent opposed Claimant’s request for \$1.00 in damages.

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

On February 2, 2021, Claimant advised that the customer in Occurrence Number 2058904 (“Customer”) was 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 February 16, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent 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 also reviewed the settlement documentation related to Occurrence Number 2058904, 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: a list of the Customer’s holdings; the Customer’s claim; and, the sworn testimony of Claimant during the hearing.

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 2058904 from registration records maintained by the CRD for Claimant Faith Read Xenos (CRD Number 1320067) 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, 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; and,

The claim, allegation, or information is false.

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

The Customer needed immediate liquidation of a large position in her portfolio to purchase realty without financing, after having the investments placed with Claimant for a relatively short period of time. This was the opposite of the "game plan" that was initially put together by Claimant with the Customer regarding how the securities were to be held and invested. The Customer wanted cash generated rather than sell and reinvest, which was the opposite of a "tax loss strategy" proposed by Claimant on the Customer's behalf. The Customer's losses were due to her failure to follow the sound investment advice offered by Claimant. The Settlement was made more as a matter of convenience rather than an admission of liability.

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 that employed the associated person at the time of the event 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: December 28, 2020 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing: February 16, 2021 1 session	

Total Hearing Session Fees	= \$ 100.00
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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

Louis David Huss

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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

Louis David Huss

Louis David Huss
Sole Public Arbitrator

02/19/2021

Signature Date

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February 19, 2021

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