

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kevin Richard Keith

Case Number: 20-02898

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Philadelphia, Pennsylvania

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

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

REPRESENTATION OF PARTIES

For Claimant Kevin Richard Keith: Brian Luther, JD., FA Expungement, LLC., Denver, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: September 1, 2020.

Kevin Richard Keith signed the Submission Agreement: September 1, 2020.

Statement of Answer filed by Respondent on or about: October 22, 2020.

Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: October 22, 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 Numbers 1039308, 1304888, 1371679; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent did not set forth a specific relief request.

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 February 16, 2021, Claimant advised that the customers in Occurrence Numbers 1039308; 1304888; and 1371679 were 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 April 6, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and took no position on Claimant's expungement request.

The customers in Occurrence Numbers 1039308, 1304888 and 1371679 did not participate in the expungement hearing. The Arbitrator found that the customers 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 occurrences in the CRD.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1371679. No customer records or the actual settlement agreement disposing of the claim were available. The Claimant testified 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.

The Arbitrator noted that the disputes related to Occurrence Numbers 1039308 and 1304888 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report, the pleadings, Claimant's testimony and supporting documentation.

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 1039308 from registration records maintained by the CRD for Claimant Kevin Richard Keith (CRD Number 1453981) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kevin Richard Keith 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

The customers complained that their account was not diversified and that they lost half of their money in the amount of \$41,000.00. After an investigation, Respondent denied the claim, finding that their investments were consistent with their stated objectives. The investments were diversified among different bond funds. Further, prior to the claimed loss, some of the high yield bonds had been sold and reinvested in municipal bonds. The customers had not accounted for the reinvestment when they made the claim. No payment was made to the customers.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1304888 from registration records maintained by the CRD for Claimant Kevin Richard Keith (CRD Number 1453981) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kevin Richard Keith 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

The customer complained that the Claimant made unsuitable investments and misrepresentations. The customer did not allege any damages. After an investigation, Respondent denied his claim, finding it to be without merit. All trades and asset allocations were discussed with and approved by the customer. The loss of principal in

the customer's account was due primarily to withdrawals, that reduced the funds available for investing. Further, apart from the withdrawals, there was an overall positive rate of return. No payment was made to customer.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1371679 from registration records maintained by the CRD for Claimant Kevin Richard Keith (CRD Number 1453981) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kevin Richard Keith 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

The customer's estate complained of unsuitable investment recommendations and unauthorized trades, claiming damages of \$71,000.00. After an investigation, Respondent found the claims to be without merit, but settled as a business decision to avoid costs and uncertainties of litigation. Respondent refunded the mark up on the bonds (\$2,226.25) to settle the claim which had been brought by decedent's estate. No contribution to the settlement was sought from the Claimant. Decedent had 15 or more years of experience investing with Claimant in municipal bonds and after meeting with Claimant and later speaking to him via telephone, specifically authorized the trade in question. Reinvestment of maturing bond proceeds in municipal bonds was entirely suitable. Further, when the estate was settled and the positions were liquidated, the bonds in question had increased in value.

4. 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 events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated 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: January 6, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: April 6, 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

George Forest Bingham

-

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

George Forest Bingham

George Forest Bingham
Sole Public Arbitrator

04/15/2021

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.

April 15, 2021

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