

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Harold Joseph Beshaw

Case Number: 20-02915

vs.

Respondent
M&T Securities, Inc.

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Harold Joseph Beshaw: Erika Binnix and Doctor Kennedy MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent M&T Securities, Inc.: Elizabeth R. Bailey, Esq., M&T Securities, Inc., Buffalo, New York.

CASE INFORMATION

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

Harold Joseph Beshaw signed the Submission Agreement: September 1, 2020.

Statement of Answer filed by Respondent on or about: October 23, 2020.

M&T Securities, Inc. signed the Submission Agreement: October 23, 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.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1721811; 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 did not delineate a 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 March 1, 2021, Claimant advised that the customer in Occurrence Number 1721811 ("Customer") was served, via FedEx and personal delivery, with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant provided a copy of the FedEx tracking form confirming delivery to the Customer on February 26, 2021 at 4:27 p.m. Additionally, Claimant filed an Affidavit confirming personal delivery on March 1, 2021.

The Arbitrator conducted a recorded hearing by videoconference on April 13, 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, did not take a position on the request for expungement.

The Customer 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 1721811, 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, including his answers to the Arbitrator's questions following his testimony; all pleadings filed in this matter, including Exhibits 1-7; and Claimant's proof of service upon the Customer.

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 1721811 from registration records maintained by the CRD for Claimant Harold Joseph Beshaw (CRD Number 2734989) with the understanding that, pursuant to Notice to Members 04-16, Claimant Harold Joseph Beshaw 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.

The claim, allegation, or information is false.

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

The Customer did not make an appearance at the hearing or provide a written statement regarding his complaint about Claimant. He was properly notified of the hearing by Claimant. The investment giving rise to the dispute was a Nationwide Life Variable Annuity with a lifetime income rider.

The Customer filed a complaint with the Commonwealth of Pennsylvania's Insurance Department dated June 6, 2014. (Exhibit 7). He did not seek arbitration through FINRA and took no other legal action to advance his claim. Upon receipt of the complaint, the Pennsylvania Insurance Department notified Nationwide Insurance on June 24, 2014, seeking a response to the complaint. The complaint alleged that Claimant had misrepresented the variable annuity investment. The complaint alleged that the Customer was "led to believe he was getting a fixed product," that "fees were not disclosed," and that the "ability to have a loss was not discussed" (Exhibit 7). On August 14, 2014, Respondent settled the complaint (Exhibit 5).

Claimant testified that a colleague of the Customer referred him to Claimant. Claimant further testified that after the purchase of the variable annuity on October 2, 2006, he didn't have any further relationship with the Customer and left Respondent in 2010. Claimant also offered the signed account application (Exhibit 2) as evidence that the Customer clearly knew the account was a variable annuity, and not a fixed annuity. Claimant testified that it was the income rider that was important to the Customer, and that the Customer immediately began drawing a monthly income amount.

Claimant further testified that the Customer also took an additional amount each year that would satisfy his income needs and keep him under the amount which would trigger early surrender charges. In support of this testimony, Claimant provided six years of year-end statements (Exhibit 4). This, combined with the fact that the Customer signed the application form, suggests that the Customer knew precisely what the fees and charges were and that for almost nine years received statements which made "fees" or "charges" clear.

Claimant further testified that he was never contacted by the Customer, and that he was not made aware of the complaint until after Respondent had settled with the Customer. He testified that he did not contribute to the settlement and was not asked for his input regarding the complaint before Respondent reached the settlement.

The Arbitrator found Claimant's testimony to be credible, and that the evidence does not support the complaint made by the Customer. Specifically, Claimant was forthright, direct, and answered all of the questions posed by both his attorney and the Arbitrator. Finally, Claimant has a spotless record after almost 25 years in the securities industry.

Counsel for Respondent took no position on the expungement claim and did not offer any testimony or evidence which contradicted the testimony of Claimant.

Therefore, based on the foregoing, the Arbitrator finds the complaint to be erroneous and false and recommends expungement of Occurrence Number 1721811 from Claimant's CRD records.

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

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 12, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: April 13, 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

Jim Geiger

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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

Jim Geiger

Jim Geiger
Sole Public Arbitrator

04/19/2021

Signature Date

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April 20, 2021

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