

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Thomas David Sharp

Case Number: 20-02916

vs.

Respondent
Ameriprise Financial Services, Inc.

Hearing Site: San Francisco, California

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 Thomas David Sharp (“Claimant”): Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

For Respondent Ameriprise Financial Services, Inc. (“Respondent”): Howard M. Klausmeier, Esq., Ameriprise Financial Services, LLC, Troy, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: September 1, 2020.
Amended Statement of Claim filed on or about: April 27, 2021
Claimant signed the Submission Agreement: September 1, 2020.

Statement of Answer filed by Respondent on or about: October 26, 2020.
Respondent signed the Submission Agreement: October 26, 2020.

CASE SUMMARY

In the Statement of Claim and 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 concurred with Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1929479 and 2009053 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
 - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; and/or
 - c. the claim, allegation, or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1929479 and 2009053 from Claimant's CRD records, pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Numbers 1929479 and 2009053 from Claimant's CRD records, pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Numbers 1929479 and 2009053;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. An award be issued recommending Claimant's expungement of Occurrence Numbers 1929479 and 2009053 from Claimant's CRD records; and
2. Any and all relief requested against Respondent be denied.

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 April 15, 2021, Claimant advised that the customers in Occurrence Number 1929479 ("Ms. R and Ms. F") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On April 15, 2021, Claimant advised that the customer in Occurrence Number 2009053 ("Ms. M") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Ms. R, Ms. F, and Ms. M are collectively referred to as the "Customers".

On April 16, 2021, Claimant filed a Motion to Amend the Statement of Claim, in which no response was made. On April 27, 2021, the Arbitrator granted the motion.

On May 17, 2021, Claimant filed an Affidavit confirming that the Customers 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 June 25, 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 oppose the request for expungement.

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

The Arbitrator has provided an explanation of his decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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. Claimant's (CRD #1623353) request for expungement of Occurrence Numbers 1929479 and 2009053 from his registration records maintained by the CRD is denied.

FINDINGS

The Arbitrator has made the decision based on the following reasons:

Claimant altered documents after they had been signed so as to qualify the Customers for REITs that exceeded the limit of Respondent's requirement for purchasing a REIT of 20% of the Customer's net worth. Because of this manipulation of net worth, the investment is rendered unsuitable.

Also, Claimant clearly stated in the Statement of Claim that he had not contributed to the settlement when in fact he paid the deductible on his Errors and Omissions insurance. This means that he did participate in the settlement and had made a false representation.

The issue of net worth came out in the hearing based upon submissions by the counsel representing the Customers. As these documents were only posted on the DR Portal the morning of the telephonic hearing, the Arbitrator issued an order to Claimant that the Arbitrator be briefed on the issue. The brief fell far short of clearing Claimant of misdeeds. The counsel for the Customers also voluntarily submitted a brief with supporting documents that reinforced their earlier statements.

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(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 20, 2021, postponement requested by Parties = \$ Waived

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 24, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 25, 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

Michael Lancaster Garcia

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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

Michael Lancaster Garcia

Michael Lancaster Garcia
Sole Public Arbitrator

07/10/2021

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.

July 12, 2021

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