

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kurt Charles Jackson

Case Number: 20-02917

vs.

Respondent
Kestra Investment Services, LLC

Hearing Site: Los Angeles, 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 Kurt Charles Jackson (“Claimant”): Frances Menzer, Esq., HLBS Law, Westminster, Colorado.

For Respondent Kestra Investment Services, LLC (“Respondent”): Amanda Beck, Esq., D’Amura & Zaidman, PLLC, Austin, Texas.

CASE INFORMATION

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

Statement of Answer filed on or about: October 19, 2020
Respondent signed the Submission Agreement: October 17, 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:

1. Expungement of Occurrence Number 2022490 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 Number 2022490 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 Number 2022490;
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. No damages be awarded against Respondent; and
2. All forum fees be assessed to Claimant.

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 10, 2021, Claimant advised that the customer in Occurrence Number 2022490 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On February 15, 2021, Claimant filed an Affidavit confirming that the 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 March 30, 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 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 2022490, 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: Statement of Claim; Statement of Answer; Claimant's exhibits 1-85; Claimant's BrokerCheck® Report; the settlement agreement; notice to the Customer; and testimony provided by Claimant at the expungement 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 2022490 from registration records maintained by the CRD for Claimant Kurt Charles Jackson (CRD Number 2913769) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kurt Charles Jackson 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 finding of fact:

The claim, allegation, or information is false.

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

The Customer alleged breach of fiduciary duty, negligence, and other causes of action related to investment in several alternative investments. A settlement was reached between Respondent and the Customer. Claimant was not involved or asked to participate in the settlement agreement.

The allegation of breach of fiduciary duty is false since the Claimant used standard suitability criteria in advising the Customer regarding investments and owed no specific fiduciary duty to the Customer. Testimony from Claimant indicated that he applied fiduciary standards while working with the Customer. The Customer approached Claimant because he had experience in gas and oil (energy) investments and she was looking for investments that would provide tax write-offs in a specific year. Her other investments, including alternative investments, grew during her time with Claimant. Claimant asked the Customer to find another financial advisor after she missed several meetings to review her investments, according to testimony and written evidence provided during the expungement hearing. The allegation that Claimant was negligent, including unspecified, other causes regarding alternative investments, was determined by the Arbitrator to be false, based upon the evidence and testimony provided at the hearing. The Customer did not choose to offer oral or written testimony at the hearing.

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 15, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 30, 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 L. Tindall

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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

George L. Tindall

George L. Tindall
Sole Public Arbitrator

05/04/2021

Signature Date

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May 05, 2021

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