

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Everest K. Y. Wong

Case Number: 20-02919

vs.

Respondent
WaMu Investments, 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 Everest K. Y. Wong (“Claimant”): Chelsea Masters, Esq., HLBS Law, Westminster, Colorado.

Respondent WaMu Investments, Inc. (“Respondent”) did not enter an appearance.

CASE INFORMATION

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

Respondent did not file a Statement of Answer or 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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1105378 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 1105378 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 1105378;
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.

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 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.

Respondent did not file a Statement of Answer. The Arbitrator determined that Respondent was served with the Claim Notification letter dated September 2, 2020 by regular mail and FedEx, as evidenced by the FedEx delivery confirmation; and the Overdue Notice (including the Statement of Claim) dated October 23, 2020 by regular mail and FedEx, as evidenced by the FedEx delivery confirmation. The Arbitrator also determined that Respondent was served with the Notification of Arbitrator dated November 16, 2020 by regular mail and FedEx, as evidenced by the FedEx delivery confirmation. The Arbitrator determined that Respondent is, therefore, bound by the Arbitrator’s ruling and determination.

The Claim Notification letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent failed to register for the DR Portal.

On April 19, 2021, Claimant filed an obituary and the death record from Lexis Nexis database reflecting that the customer in Occurrence Number 1105378 (“Customer”), was deceased and therefore Claimant was unable to serve the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on December 13, 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 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 was unable to review the settlement documentation related to Occurrence Number 1105378 due to the length of time since the settlement occurred and that Respondent is non-responsive. The Arbitrator reviewed the settlement amount, Claimant’s contribution amount, and the broker statement from Claimant’s BrokerCheck® Report. The Arbitrator noted that the date of the settlement preceded the effective date of the rule against conditioned

settlements. Based on Claimant's testimony, the Arbitrator also noted that Claimant contributed to the settlement to avoid the cost of litigation and as a gesture of goodwill.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's exhibits; and Claimant's testimony.

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 1105378 from registration records maintained by the CRD for Claimant Everest K. Y. Wong (CRD Number 3166711) with the understanding that, pursuant to Notice to Members 04-16, Claimant Everest K. Y. Wong 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:

According to Claimant's testimony and written submissions, Claimant inherited the account of the Customer from the previous broker in or around August 2002.

The Customer held an investment in a Jackson National Life fixed annuity with Cal Fed. She told Claimant that she was dissatisfied with the returns. Claimant suggested that she switch to the Franklin Income Fund Class A, which had significantly higher returns. Claimant also stated that he interviewed her in depth, analyzed her entire financial picture and determined that the Franklin Fund was a suitable investment for her.

Claimant stated that he explained to the Customer in great detail all of the costs that would be associated with the transfer, but felt it would be worth it due to the significantly higher rate of return.

Claimant also stated that he explained clearly to the Customer that the underlying investment could vary in value over time. She had other investments which could vary in value over time, so she was already experienced with such investments.

The Customer began the process of purchasing \$100,000.00 of the Franklin Fund on August 30, 2002 and completed it on September 5, 2002.

Claimant stated that on September 30, 2002, he was informed by Respondent that the Customer had submitted a complaint alleging that she was unaware that the value of the Franklin Fund could fluctuate and unaware of the sales charges associated with the purchase of the fund. He stated that the Customer had never contacted him in any way to complain about the purchase prior to sending her complaint to Respondent.

Claimant wrote a letter to Respondent on October 2, 2002 in which he clearly and in detail explained the entire transaction and that the Customer had clearly been assessed of, and understood, that the value of the Franklin Fund could vary and all of the costs associated with purchasing it. Claimant also submitted, in this proceeding, all of the paperwork, signed by the Customer, which supports his narrative.

Claimant stated that Respondent told him that they intended to settle the matter as a "good will" gesture and to avoid the significant costs of litigation, without admitting to any wrongdoing. Claimant stated that Respondent told him that the matter would not go on his record and that he would not have to pay. Claimant stated that later the matter did go on his record and that Respondent had required him to contribute to the settlement which represented both the sales charge for the Franklin Fund as well as the difference in its value between the time it was purchased and sold. In addition to this amount, Respondent sold the Franklin Fund investment and returned the principal to the Customer. Claimant stated that he felt he had been misled by Respondent and manipulated into settling.

Claimant testified in great detail and clearly, coherently and persuasively that he had explained everything about the Franklin Fund to the Customer, including that it could vary in value and all of the costs associated with purchasing it, and that the Customer fully understood everything he had explained. He also stated that the Customer had taken five days to think about the purchase after they had initially discussed it before finalizing it, so she was not rushed into a decision. Claimant believes that her contact at CAL FED, where she had held the Jackson Annuity, may have influenced her to reverse the purchase of the Franklin Fund investment.

The Arbitrator notes that no other parties testified or produced evidence at this hearing. Respondent was properly served at their last known address but did not respond in any way. It appears that Respondent no longer exists. In addition, Claimant submitted fully probative evidence that the Customer is deceased.

Given that Claimant gave extremely clear and credible testimony and supported by documentary evidence, it seems very clear that the allegations contained in Claimant's CRD are false. It is not in the public interest for false statements to be in the CRD and, therefore, the Arbitrator recommends expungement of this instance.

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
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**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
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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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	=\$	100.00
Pre-Hearing Conferences: December 23, 2020	1 session	
September 21, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing: December 13, 2021	1 session	
Total Hearing Session Fees	=\$	150.00

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

Philip Aaron Tymon

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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

Philip Aaron Tymon

Philip Aaron Tymon
Sole Public Arbitrator

12/23/2021

Signature Date

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December 28, 2021

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