

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Tony Peter Krvaric

Case Number: 20-02920

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: San Diego, 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

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

REPRESENTATION OF PARTIES

For Claimant Tony Peter Krvaric (“Claimant”): Zachary Hayes-Macaluso, Esq. FA Expungement, LLC, Denver, Colorado.

For Respondent Wells Fargo Clearing Services, LLC (“Respondent”): Deirdre Wolff, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

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: November 6, 2020.
Respondent signed the Submission Agreement: November 6, 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 1088168 from Claimant's CRD records pursuant to a finding that the claims, allegations, and information are either "false" in accordance with FINRA Rule 2080(b)(1)(C) or "factually impossible or clearly erroneous" in accordance with FINRA Rule 2080(b)(1)(A); and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent objected to any compensatory damages and requested any fees associated with the expungement hearing and any costs associated with the confirmation of award should be borne by 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 May 14, 2021, Claimant advised that the customers in Occurrence Number 1088168 ("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 3, 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, took no position on Claimant's request for expungement.

The Customers did not participate in the expungement hearing but filed a statement opposing Claimant's request for expungement.

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 noted that the dispute related to Occurrence Number 1088168 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; exhibits; Claimant's testimony; and the Customers' letter dated June 1, 2021 opposing Claimant's request for expungement.

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 1088168 from registration records maintained by the CRD for Claimant Tony Peter Krvaric (CRD Number 3013654) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tony Peter Krvaric 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:

Claimant was the Customers’ financial advisor from 1999 to approximately 2002. The three accounts the Customers had in which Claimant was their advisor were non-discretionary, in which a broker makes investment recommendations to the accountholder, but he or she must get approval for investment decisions before any transactions occur.

The Customers received regular account statements and contact from Claimant.

Some of the Customers’ investments were in the “Tech” industry, which suffered what came to be called the “tech wreck” or the “burst of the dotcom bubble”, a severe and rapid decline of market value, resulting in large financial losses to many investors and the unprecedented historical events of September 11, 2001.

The initial complaint letter of July 8, 2002 from the Customers to A.G. Edwards alleged: “Lack of Timely and Suitable Investment Accounts Advice”. A.G. Edwards responded to the letter with a denial and heard no more from the Customers, and considered the matter closed on July 8, 2004. The allegations of “Suitability” were never pursued in any forum and the Arbitrator cannot and will not rule on those issues. Financial Advisors are not required to be able to foresee all eventual market actions. Unforeseen losses do occur. The claim, allegation, or information was never substantiated beyond the letter of complaint. There was no hearing or settlement on the original complaint. A single letter of complaint with no follow-up or substantiation should not be allowed to taint a professional career. This occurrence is the sole entry on Claimant’s BrokerCheck Report.

This expungement presents no on-going harm to investors or the general public.

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

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 14, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 3, 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

Robert E. Jenks

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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

Robert E. Jenks

Robert E. Jenks
Sole Public Arbitrator

06/14/2021

Signature Date

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June 14, 2021

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