

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Thomas Joseph Brough

Case Number: 20-02929

vs.

Respondent

Wedbush Securities Inc.

Hearing Site: Chicago, Illinois

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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 Joseph Brough (“Claimant”): Erika Binnix, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Wedbush Securities Inc. (“Respondent”): Charles B. LaChaussee, Esq., Wedbush Securities Inc., Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: September 2, 2020.  
Claimant signed the Submission Agreement: September 1, 2020.

Statement of Answer filed on or about: October 22, 2020.  
Respondent signed the Submission Agreement: September 18, 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 denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and opposed Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1476567, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator

deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's expungement request be denied in its entirety, that all of the allegations in the Statement of Claim be dismissed with prejudice, that all forum and arbitration fees be assessed against Claimant, and such other and further relief as the Arbitrator deems appropriate.

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 August 17, 2021, Claimant advised that the customers in Occurrence Number 1476567 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On August 23, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the notice.

The Arbitrator conducted a recorded, telephonic hearing on September 29, 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, opposed the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 1476567, 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 contributed to the settlement amount.

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

### **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 1476567 from registration records maintained by the CRD for Claimant Thomas Joseph

Brough (CRD Number 2403390) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Joseph Brough 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 Customers were financially successful business owners who understood the guidance they were given by Claimant. His guidance was consistent with the risks the Customers found acceptable after being fully briefed on the risks attendant to the Customers' investment decisions. When the market crashed, the Customers' account also declined. Claimant could not anticipate the market decline. Claimant acted in good faith at all times.

Respondent presented a case that if true, would assess much fault against Claimant. However, in the underlying arbitration case, the Answer to Statement of Claim (“2010 Answer”) agreed with Claimant's case, as now presented. This 2010 Answer was an analytical and thorough defense of Claimant. When asked how this apparent paradox could exist, Respondent's counsel replied that the 2010 Answer was a general denial, awaiting discovery and proof. On the contrary, the 2010 Answer was detailed and well researched. The attorney who filed it was duty bound, as are all attorneys, to only file documents in good faith. It is not credible that the 2010 Answer was not reflective of Respondent's actual belief at the time. Nothing presented at the expungement hearing contradicted that belief.

Further, Rule 13206 of the Code has no application here. Simply put, the matter for which expungement is sought is still on Claimant's BrokerCheck® report. Also, many cases, including *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79 (U.S. 2002), leave it up to arbitrators to determine this issue. There is no need to analyze the issue. The fact that Claimant's BrokerCheck® Report still shows the case is enough to establish eligibility.

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:

One (1) pre-hearing session @ \$50.00/session	=\$	50.00
Pre-Hearing Conference: February 22, 2021                      1 session		
One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing:    September 29, 2021                      1 session		
<b>Total Hearing Session Fees</b>	<b>=\$</b>	<b>100.00</b>

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 J. Glick

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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 J. Glick***

Philip J. Glick  
Sole Public Arbitrator

**10/05/2021**

Signature Date

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October 05, 2021

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