

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David D. Davis

Case Number: 20-02934

vs.

Respondent
Banc One Securities Corporation

Hearing Site: Dallas, Texas

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 David D. Davis (“Claimant”): Benjamin Winograd, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

Respondent Banc One Securities Corporation (“Respondent”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: September 2, 2020.
Amended Statement of Claim filed on or about: March 18, 2021.
Claimant signed the Submission Agreement: September 2, 2020.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, as amended, 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, as amended, Claimant requested expungement of Occurrence Number 1174906, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Respondent did not file a 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.

On March 18, 2021, Claimant filed a Motion to Amend the Statement of Claim, to which no response was filed (“Motion to Amend”). In an Order dated March 31, 2021, the Arbitrator granted the Motion to Amend.

On April 27, 2021, Claimant advised that the customers in Occurrence Number 1174906 (“Customers”) were served with the Amended Statement of Claim and notice of the date and time of the expungement hearing (“Notices”). On May 3, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed a copy of the FedEx tracking information available for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on June 2, 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 Customers also 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 noted that Claimant was unable to obtain a copy of the settlement agreement or any other documentation from Respondent. The Arbitrator considered the amount of payment made to any party to the settlement and noted that Claimant contributed to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim, Amended Statement of Claim, BrokerCheck® Report, Claimant’s letter regarding the settlement agreement, and Claimant’s testimony and representations.

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 1174906 from registration records maintained by the CRD for Claimant David D. Davis (CRD Number 3047789) with the understanding that, pursuant to Notice to Members 04-16,

Claimant David D. Davis 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The Customers had one joint account with Respondent. All other accounts were with other firms. They had a high net worth and significant experience investing in stocks, bonds, and mutual funds. They also had a long investment time horizon, no liquidity needs, and plenty of cash reserves.

The Customers wanted to further diversify their investments and were looking for higher yields. Claimant recommended a unit investment trust. The Customers agreed and signed all necessary documents, including disclosure documents for their new investments. Several years later, the Customers realized that each payment they received included a small portion of their original investment being returned and complained. However, this information was covered in the documentation for the investment before any purchase was made.

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: December 30, 2020	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: June 2, 2021	1 session		
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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

C. Sumpter Logan

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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

C. Sumpter Logan

C. Sumpter Logan
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)