

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

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In the Matter of the Arbitration Between:

Claimant  
Christine A. Kelley

Case Number: 20-02939

vs.

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Tampa, Florida

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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 Christine A. Kelley (“Claimant”): Harris Freedman, Esq. and Zachary Morse, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Respondent”): Kathryn D. Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

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

Statement of Answer filed on or about: October 20, 2020.  
Respondent signed the Submission Agreement: October 21, 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 request for expungement and asserted affirmative and other defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2066393, 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 denial of Claimant's request for compensatory damages.

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 24, 2021, Claimant, one of the joint account owners in Occurrence Number 2066393, advised that the other joint account owner in Occurrence Number 2066393 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On March 1, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice. On March 10, 2021, Claimant filed an additional copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on April 8, 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 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 noted that the dispute related to Occurrence Number 2066393 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: Statement of Claim; Statement of Answer; Claimant's BrokerCheck® Report; Claimant's testimony; and Respondent's letter to the Customer, denying the underlying complaint against Claimant.

### **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 2066393 from registration records maintained by the CRD for Claimant Christine A. Kelley (CRD Number 5899366) with the understanding that, pursuant to Notice to Members 04-16, Claimant Christine A. Kelley 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

The Customer and his former wife, Claimant, signed an agreement giving each of them the power to withdraw funds from the joint money market fund at issue without obtaining authorization or permission from the other. Accordingly, the Customer's assertion that Claimant's withdrawal of funds from the account was unauthorized, presumably by him, is both clearly erroneous and false.

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 24, 2020	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: April 8, 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**

Thomas J. Patka

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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**

***Thomas J. Patka***

Thomas J. Patka  
Sole Public Arbitrator

**04/12/2021**

Signature Date

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April 12, 2021

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