

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Michael John Capobianco

Case Number: 20-02964

vs.

Respondent

Triad Advisors LLC

Hearing Site: Boston, Massachusetts

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 Michael John Capobianco: John A. Mangones, Esq., Godbout Law PLLC, Boston, Massachusetts.

For Respondent Triad Advisors LLC: Tyler Schubauer, Esq., Triad Advisors, LLC, Norcross, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: September 3, 2020.

Michael John Capobianco signed the Submission Agreement: September 3, 2020.

Statement of Answer filed by Respondent on or about: September 24, 2020.

Triad Advisors LLC signed the Submission Agreement: September 24, 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: expungement of Occurrence Number 1627047 and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested that Claimant's demand for \$1.00 in damages be denied and that all FINRA processing and forum fees be assessed against 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 February 10, 2021, Claimant advised that the customer in Occurrence Number 1627047 was 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 March 4, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The customer in Occurrence Number 1627047 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 also reviewed the settlement documentation related to Occurrence Number 1627047, 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 conditioned on the customer to the settlement not opposing the expungement request. However, the settlement was reached in June 2013, pre-dating the July 30, 2014 effective date of FINRA Rule 2081 which prohibits such conditional settlement. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's testimony; Claimant's BrokerCheck® Report; Settlement Agreement; and other exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 1627047 from registration records maintained by the CRD for Claimant Michael John Capobianco (CRD Number 2159543) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael John Capobianco 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 factually impossible or clearly erroneous.

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

Between January 2011 and May 2012, the Claimant served as one of at least four (4) other registered representatives or assistants who provided investment services to the customer who made the complaint that is the subject of this expungement request.

The letter of complaint dated August 8, 2012, that served as the basis for the disclosure claimed losses of \$160,000.00, without identification as to the method of computation. The letter was not delivered to the Claimant but to the branch manager of the broker-dealer with whom Claimant was registered with at the time. The letter alleged churning of his account, flipping of the account, excessive trades with little or no regard for the client, exorbitant commissions, and purchases of numerous mutual funds with high commissions. The customer dispute letter did not reference the Claimant by name or his misconduct but stated that his account was mishandled by Morton Financial (“Morton”) and Capitol Securities (“Capitol”). The letter did not identify which of the representatives purportedly engaged in the misconduct. Claimant testified that a team of at least three other registered representative or assistants provided services to the customer over the term of the relationship. Although he remembers having conversations with the customer from time to time, he does not recall any suggestion of dissatisfaction with the customer’s account performance. Claimant also testified that he remembered that the account was not discretionary, that the customer would call and order representatives to make trades without the Claimant’s knowledge or participation, and that the customer received trade notices, monthly statements, year-end statements and tax information identifying the transaction in the account and their performance. No problem was ever brought to Claimant’s attention prior to the letter of August 8, 2012. According to the Claimant, during the period of the relationship, the account had net appreciation. Following receipt of the letter, and without the commencement of any proceedings, Morton and Capitol settled the Claim for payment of \$60,000.00 of which Morton paid \$30,000.00 and Capitol paid \$30,000.00. The Claimant did not personally contribute any amount towards the settlement. In his testimony, the Claimant admitted that he was one of the two owners of Morton. He stated that the agreement to settle was made on the advice of counsel and only after Morton was advised that Capitol was settling to resolve pending liabilities and in order to facilitate a merger transaction. Claimant said Morton viewed the settlement payment as preferable to payment of defense cost that would likely exceed that amount. Claimant was not aware of the circumstances surrounding the decision by the broker dealer to report the customer dispute on his U-4, U-5 and CRD rather than any of the other registered representatives.

Based on the fact that the Claimant was not identified by the customer as the registered representative who allegedly caused the damage or engaged in the misconduct that contributed to the losses, and the Claimant's testimony that there were other registered representatives or employees who interacted with the customer, and that the customer never complained to the Claimant about the Claimant's misconduct, the Claimant has satisfied his burden under Rule 2080(b)(1)(A).

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 giving rise to the dispute. Accordingly, as a party, Respondent Triad Advisors LLC 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 5, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 4, 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

Richard J. Grahn

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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

Richard J. Grahn

Richard J. Grahn
Sole Public Arbitrator

03/16/2021

Signature Date

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March 16, 2021

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