

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James R. Young

Case Number: 20-02967

vs.

Respondent
Hightower Securities, LLC

Hearing Site: Denver, Colorado

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 James R. Young (“Claimant”): Robert Moses, Esq., Lax & Neville LLP, New York, New York.

For Respondent Hightower Securities, LLC (“Respondent”): Meghan E. Flinn, Esq., K&L Gates LLP, Washington, District of Columbia.

CASE INFORMATION

Statement of Claim filed on or about: September 3, 2020.
Claimant signed the Submission Agreement: September 3, 2020.

Statement of Answer filed by Respondent on or about: December 1, 2020.
Respondent signed the Submission Agreement: December 1, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1438903, 1411228, 1433137, 1485397, and 1556151 from his CRD records pursuant to FINRA Rule 2080 and FINRA Code of Arbitration Procedure (“Code”) Rule 13805, on the basis that: 1) the allegations as to Claimant are clearly erroneous; 2) Claimant was not involved in any sales practice violation; and 3) the claims and allegations against him are false; and
2. Compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested:

1. Claimant’s request for compensatory damages be denied; and
2. FINRA fees associated with the expungement hearing and costs associated with the confirmation of the award be assessed against Claimant.

At the hearing, Claimant withdrew his 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.

On March 1, 2021, Claimant advised the customers in Occurrence Numbers 1438903, 1433137, 1485397, and 1556151 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing. On that same date, Claimant submitted an obituary for the customer in Occurrence Number 1411228.

The Arbitrator conducted a telephonic hearing on March 16, 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 Claim, did not oppose 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 has not previously ruled on expungement of the same occurrences in the CRD.

The Arbitrator reviewed the settlement documentation related to Occurrence Number 1433137, 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 did not contribute to the settlement amount. Claimant’s previous employer, UBS Financial Services Inc., settled with the customers in Occurrence Number 1433137 by repurchasing the Auction Rate Securities.

The Arbitrator also reviewed the settlement documentation for Occurrence Numbers 1438903 and 1485397, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the request for expungement and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the disputes related to Occurrence Numbers 1411228 and 1556151 were not settled and, therefore, there were no settlement documents to review.

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 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 Numbers 1438903, 1411228, 1433137, 1485397, and 1556151 from registration records maintained by the CRD for Claimant James R. Young (CRD Number 720080) with the understanding that, pursuant to Notice to Members 04-16, Claimant James R. Young 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

The preponderance of the evidence supports Claimant's version of the transactions in all five occurrences. Claimant did not contribute to any settlements and presented the transactions in a responsible manner with a quality of research available at the time in each occurrence. On all five occurrences, Claimant did not consent to any settlements or condition any settlements on expunging the complaints. Claimant was not disciplined at any time and for these reasons, denial of the five expungements would not serve any investor protection or regulatory value.

Occurrence Number 1438903

Claimant was not involved in the transaction at issue. The customer was not a client and Claimant did not make any recommendations. Claimant was not involved in any alleged sale practice violations.

Occurrence Number 1411228

The transactions, involving UBS Preferred Securities, were authorized and suitable. They were not overly concentrated in the customer's portfolio, which represented approximately 8.00% of the portfolio. The allegations were false and losses resulted from the global market downturn of 2007-2008.

Occurrence Number 1433137

Claimant did not misrepresent the securities. The failure of the Auction Rate Securities market contributed to the settlement of the transactions. Claimant was relying on the literature that was prepared and approved by UBS Financial Services Inc. and they took responsibility for the securities and returned the par value of the securities to the customers. The settlement by UBS Financial Services Inc. was not based on any finding of fault by Claimant. The allegations were erroneous.

Occurrence Number 1485397

The securities were part of a building block for college and became worthless with the bankruptcy of the Lehman Brothers firm. The customers provided a statement and letter of satisfaction with Claimant and specifically did not hold Claimant responsible, viewing the matter as a UBS matter. The allegations against Claimant were false.

Occurrence Number 1556151

The customer granted and signed off on discretionary authority and reviewed his account frequently. The account was not managed by Claimant. The customer provided a letter of satisfaction with the Claimant. The allegations against Claimant were false.

The preponderance of the evidence presented shows the allegations were false and were not sales practice violations. In all five occurrences, Claimant was not involved in any wrongdoing. The Arbitrator finds the Claimant's versions of events were supported by the testimony, the exhibits, and the documents.

For these reasons, expungement of the five occurrences on Claimant's CRD records is appropriate.

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 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: December 15, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 16, 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

Frances Johnson Wright

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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

Frances Johnson Wright

Frances Johnson Wright
Sole Public Arbitrator

04/05/2021

Signature Date

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April 06, 2021

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