

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James Oconnell Barbi

Case Number: 20-02975

vs.

Respondent
Eastbrook Capital Group LLC

Hearing Site: New York, New York

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 James Oconnell Barbi: Dochter Kennedy, MBA, J.D., and Harris Freedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

Respondent Eastbrook Capital Group LLC did not enter an appearance.

CASE INFORMATION

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

Respondent Eastbrook Capital Group LLC did not file a Statement of Answer or sign the Submission Agreement.

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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1821344; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file a Statement of Answer or 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 June 17, 2021, Claimant advised that the customer in Occurrence Number 1821344 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing. On June 21, 2021, Claimant filed an Affidavit confirming that the Customer 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 July 22, 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 Customer also 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 1821344, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the settlement agreement, Claimant's BrokerCheck® Report, Respondent's BrokerCheck® Report, and the proof of service documentation.

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. Claimant’s claim for \$1.00 in compensatory damages is granted.
2. The Arbitrator recommends the expungement of all references to Occurrence Number 1821344 from registration records maintained by the CRD for Claimant James Oconnell Barbi (CRD Number 2399515) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Oconnell Barbi 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds as it relates to the Customer complaint involving Occurrence Number 1821344. At no time was the Claimant in a fiduciary relationship with the Customer. The Customer alleged that he did not want the investments in the Davidson Portfolio and that he had requested only three-month Treasury bills (“T-Bills”) in his account. The evidence presented by the Claimant showed that the Customer was a client of another financial advisor with Respondent, who was a colleague of Claimant, and that when this colleague left Respondent, the customer authorized the transfer of his accounts to follow his colleague with the exception of the account which is the basis of the Customer’s complaint. That account did not follow the Claimant’s colleague because it was frozen at the time of the colleague’s departure. Claimant was neither the partner of the broker who managed the Customer’s accounts nor his supervisor. The Claimant has never met the Customer and spoke briefly to the Customer only two times on the same day to obtain sufficient information to direct the Customer to the appropriate contact person at Respondent firm. Claimant had no knowledge of the details of the Customer’s account with Respondent and did not receive any commissions or fees from any of the Customer’s accounts with Respondent. Though the Customer’s complaint was ultimately settled; the Claimant played no part in the settlement negotiations and did not contribute to the settlement amount. Furthermore, the settlement amount was a fraction of the amount sought by the Customer’s complaint. The settlement amount was \$215,000 and the customer sought \$2 million in compensatory damages. For the aforementioned reasons, the Claimant’s request for expungement of Occurrence Number 1821344 is granted on the basis of Rule 2080 (b)(1)(B).

3. 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 events giving rise to the dispute. Accordingly, as a party, Respondent Eastbrook Capital Group 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 22, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: July 22, 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

Josian Antoine

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Josian Antoine

Josian Antoine
Sole Public Arbitrator

08/09/2021

Signature Date

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August 10, 2021

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