

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joseph P. Silvestri

Case Number: 20-02977

vs.

Respondent
New England Securities Corporation

Hearing Site: Jersey City, New Jersey

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 Joseph P. Silvestri: Dochter Kennedy, MBA J.D., and Frances Menzer, Esq. AdvisorLaw, LLC, Westminster, Colorado.

For Respondent New England Securities Corporation: Martin Harris, Esq., Harris & Affiliates, Ltd., Chicago, Illinois.

CASE INFORMATION

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

Statement of Answer filed by Respondent on or about: January 25, 2021.
New England Securities Corporation signed the Submission Agreement: February 4, 2021.

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 1034446; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief

that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not set forth a specific relief request.

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 23, 2021, Claimant advised that the customers in Occurrence Number 1034446 were served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 1, 2021, Claimant filed an Affidavit confirming that the customers were 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 7, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

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 was unable to review the settlement document related to Occurrence Number 1034446. Due to the age of the underlying Occurrence, the actual Settlement Agreement disposing of the claim was unavailable. The Arbitrator considered the amount of payment made to any party to the settlement. Based on Claimant's testimony, 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: Claimant's BrokerCheck® Report, the pleadings, Claimant's testimony, and the exhibits.

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 1034446 from registration records maintained by the CRD for Claimant Joseph P. Silvestri (CRD Number 1812212) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joseph P. Silvestri 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 customers became clients of Claimant in 2001. Their objective was growth and income with a moderate risk tolerance. After many discussions with Claimant, they verbally authorized the purchase of American Funds Class A shares and the liquidation and transfer of an investment portfolio held at another firm. They signed all necessary disclosures and acknowledgements, including terms, risks and fees. In October 2001, they complained to the firm that the transfer was unauthorized and that fees were charged in error. The firm, in order to avoid the risk and expense of litigation, reimbursed them for the amount of fees charged. Claimant did not contribute. This occurrence should be expunged on the ground it is clearly erroneous, false or both. The purchase and account transfer was authorized by the clients, and all fees were fully disclosed. The inadvertent failure to telephonically advise them of the account transfer was meaningless since they did not attempt to reverse it and in fact retained the new position which was soon very profitable. Claimant also testified as to the negative impact this disclosure has had on his business and development efforts. The interests of consumer protection and awareness being in no way negatively implicated, the undersigned recommends the above occurrence be expunged from Claimant’s CRD records.

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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent New England Securities Corporation 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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: February 4, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: July 7, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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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

Robert E. Anderson

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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

Robert E. Anderson

Robert E. Anderson
Sole Public Arbitrator

07/16/2021

Signature Date

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July 16, 2021

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