

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Lawrence Charles Cane

Case Number: 20-02982

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Los Angeles, California

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 Lawrence Charles Cane (“Claimant”): Frances Menzer, Esq., HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Patrick J. Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

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(s) on or about: October 30, 2020.
Respondent signed the Submission Agreement: October 30, 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”).

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent took no position on Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1860389 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
 - a. The claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment—related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
 - c. The claim, allegation, or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

At the hearing, Claimant withdrew his 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 1, 2021, Claimant filed an Affidavit that the customers in Occurrence Number 1860389 ("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 April 15, 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, 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1860389, 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: Claimant's testimony; Claimant's letter dated February 19, 2021; and Respondent's letter dated January 7, 2016.

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 Number 1860389 from registration records maintained by the CRD for Claimant Lawrence Charles Cane (CRD Number 1487211) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lawrence Charles Cane 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 evidence showed: (1) Mr. B, who is one of the Customers (“Mr. B and Mrs. B”), sent Claimant a letter instructing him to sell the bonds and stocks he had inherited from his mother; (2) Claimant called Mr. B and advised him not to sell the bonds and stocks because he had very small positions in a large number of bonds and stocks and it would not be to his financial advantage to do so; (3) Mr. B was surprised to learn this information and told Claimant to “forget the whole thing”; and (4) Claimant did not sell the bonds or the stocks. Mr. B later alleged that Claimant should have sold the stocks and that Claimant failed to follow his instructions.

The Arbitrator finds that Claimant did follow Mr. B’s instructions and consequently, the allegation that he did not follow his instructions is clearly erroneous and false. For this reason, expungement of Occurrence Number 1860389 is appropriate.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure (“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 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: January 5, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 15, 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

Anita Rae Shapiro

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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

Anita Rae Shapiro

Anita Rae Shapiro
Sole Public Arbitrator

04/30/2021

Signature Date

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April 30, 2021

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