

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Robert Chapman Bradshaw

Case Number: 20-02997

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Norfolk, Virginia

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Robert Chapman Bradshaw: Dochter Kennedy, MBA, J.D. and Michael O’Gara, Esq., Advisor Law LLC, Westmintser, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Laura A. Pizzitola, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Robert Chapman Bradshaw signed the Submission Agreement: September 3, 2020.

Statement of Answer filed by Respondent on or about: October 26, 2020.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: October 26, 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 1252479; 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 objected to Claimant's request for \$1.00 in compensatory damages.

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 March 25, 2021, Claimant advised that the customer in Occurrence Number 1252479 was served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 30, 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 hearing by videoconference on June 8, 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 noted that the dispute related to Occurrence Number 1252479 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's testimony; Claimant's BrokerCheck® Report; 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 1252479 from registration records maintained by the CRD for Claimant Robert Chapman Bradshaw (CRD Number 3188148) with the understanding that, pursuant to Notice to

Members 04-16, Claimant Robert Chapman Bradshaw 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:

Claimant testified that he assumed the role of the customer’s broker following the death of her mother in the fall of 2003. Claimant had been the deceased’s broker and the customer sought his advice on the inheritance left to the customer by her mother. The approximate value of the inheritance was \$300,000. Claimant proceeded to recommend a diversified portfolio made up of cash, mutual funds consisting of both stocks and bonds and a variable annuity in addition to the Global Macro Trust. The Global Macro Trust was approximately 10% of the entire portfolio.

Further, Claimant testified that there were no interactions between him and the customer regarding the portfolio. In December of 2004, the customer informed Respondent that she was moving her portfolio to another Advisor not in Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”). Claimant testified that he had no reason to believe there was a problem and he presumed it was simply a matter of distance, approximately 2 hours, between him and the customer. All of the transfers to the new broker were made appropriately and Claimant testified that he had no discussion with either the customer or the new broker. He does not know if changes were made to the investments.

The allegation of suitability arose in April of 2005 and concerned itself with Global Macro Trust. Claimant testified that Respondent’s compliance department investigated the matter and determined that there was no wrongdoing. Claimant was not certain of the reason for the concern but testified that the Global Macro Trust was the one investment that customer could not transfer to a broker outside of Merrill Lynch and that it could only be redeemed once per month and only after the paper work could be completed. Further, while this particular investment declined by \$4,000, all of the other investments in the portfolio had increased in value.

The Arbitrator finds that the testimony of the Claimant was credible. Specifically, Claimant was forthright, direct and answered all questions posed to him. It is clear that the dispute between the customer and the broker is clearly not about a sales practice. The time it took to redeem the disputed investment may have been a service practice problem or simply that the customer or her broker did not handle the transfer properly. However, the public record only references the suitability allegation.

It is left to the Arbitrator to determine whether or not the investment was suitable for the customer. In the absence of any evidence to the contrary, the Arbitrator finds that it was suitable and that the allegation is false and erroneous.

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 Merrill Lynch, Pierce, Fenner & Smith Inc. 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 4, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 8, 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

Jim Geiger

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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

Jim Geiger

Jim Geiger
Sole Public Arbitrator

06/17/2021

Signature Date

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.

June 22, 2021

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