

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael David Maroni

Case Number: 20-03000

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Cincinnati, Ohio

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 Michael David Maroni (“Claimant”): Zachary Morse, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Respondent”): Joel M. Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: September 4, 2020.
Claimant signed the Submission Agreement: September 4, 2020.

Statement of Answer filed on or about: October 28, 2020.
Respondent signed the Submission Agreement: October 28, 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1080103, compensatory damages in the amount of \$1.00, 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 compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 23, 2021, Claimant filed Death Records and obituaries for the customers in Occurrence Number 1080103 ("Customers").

The Arbitrator conducted a recorded, telephonic hearing on June 2, 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, took no position on the request for expungement.

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 1080103, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlements. 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, Death Records, BrokerCheck® Report, Statement of Claim, and Exhibits 1-2.

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 1080103 from registration records maintained by the CRD for Claimant Michael David Maroni (CRD Number 2149829) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael David Maroni 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, a married couple, were experienced investors with substantial income and a high net worth. They were the parents of Claimant’s friend. In 1997, the husband approached Claimant in his capacity as an advisor. Claimant used risk assessment tools provided by Respondent and by third parties to determine the risk tolerance of the Customers. They claimed they were “aggressive” investors. Using risk tolerance tools, Claimant found their investment profile was not “aggressive” but was “moderate to aggressive.” He resisted the Customers’ son’s encouragement to revise the profile to “aggressive.”

The portfolio consisted of multiple accounts. Some of which were retirement accounts but most were managed by third-party administrators or mutual funds. One of the accounts only held a highly-concentrated position in one company (“Company”), and one of the accounts was an active investment account for equities. Among the other equity accounts, there were large cap value, large-cap growth, international, etc. All of the accounts were nondiscretionary. The allocation was generally 20% fixed/tax free; 15% balance funds; and 65% equity, including the account with the highly-concentrated position.

Claimant held quarterly meetings with the Customers. However, due to proximity and their personal relationship, actual communication was much more frequent. All positions and trades were continuously vetted and discussed between the husband and Claimant, and they attended Company annual meetings together. Claimant advised the husband of the inherent risks of a large concentration in a single stock, but the husband insisted on maintaining the position. Claimant also assisted in some estate planning for the Customers.

There was no forewarning of the Customers’ dissatisfaction. The underlying arbitration claim was filed on the heels of the tech stock pullback that peaked in March 2000. The portfolio declined, but not as much as the market generally. The portfolio was well diversified and nondiscretionary. Claimant had consistently advised the Customers as to positions and trades consistent with their moderate to aggressive profile. Further, the Customers were sophisticated investors who maintained a highly concentrated large position in a single stock, notwithstanding Claimant’s advice on its inherent risk, which is inconsistent with their claims.

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(s) that employed the associated person(s) at the time of the event(s) 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 @ \$50.00/session	=\$	50.00
Pre-Hearing Conference: February 3, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing: June 2, 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

Gregory P. Szuter

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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

Gregory P. Szuter

Gregory P. Szuter
Sole Public Arbitrator

06/11/2021

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 11, 2021

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