

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Thomas Michael Weissenburger

Case Number: 20-03004

vs.

Respondent

Raymond James Financial Services, Inc.

Hearing Site: Des Moines, Iowa

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 Thomas Michael Weissenburger (“Claimant”): Harris Freedman, Esq. and Docthor Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Raymond James Financial Services, Inc. (“Respondent”): Robert M. Rudnicki, Esq., Raymond James Financial Services, Inc., St. Petersburg, Florida.

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: September 22, 2020.

Respondent signed the Submission Agreement: September 22, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1853977, 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 requested that all fees be assessed to Claimant.

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 February 10, 2021, Claimant advised that the customer in Occurrence Number 1853977 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On February 15, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

On February 17, 2021, the Customer’s daughter submitted a letter (“Customer’s Letter”) on the Customer’s behalf in support of Claimant’s expungement request.

On March 15, 2021, Claimant filed an Affidavit of the Customer (“Customer’s Affidavit”) in support of Claimant’s expungement request.

The Arbitrator conducted a recorded, telephonic hearing on March 25, 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 1853977 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: Claimant’s testimony, Claimant’s Exhibits, the Customer’s Affidavit, and the Customer’s Letter.

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 1853977 from registration records maintained by the CRD for Claimant Thomas Michael Weissenburger (CRD Number 2119726) with the understanding that, pursuant to Notice to

Members 04-16, Claimant Thomas Michael Weissenburger 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 claim, allegation, or information is false because the variable annuity (“Annuity”) was suitable for the Customer at the time of its purchase and thereafter. She was fully informed of all aspects of the Annuity and made fully informed decisions about the Annuity. She still owns the Annuity today and remains satisfied with it.

Further, the claim, allegation, or information is clearly erroneous because the Customer merely inquired about the surrender charge for the variable annuity. The Customer’s inquiry was not a complaint against Claimant.

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: December 17, 2020	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: March 25, 2021	1 session		
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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

Frederick Ramos

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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

Frederick Ramos

Frederick Ramos
Sole Public Arbitrator

03/31/2021

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.

March 31, 2021

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