

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Paul Avila Neves

Case Number: 20-03015

vs.

Respondent
Securities America, Inc.

Hearing Site: San Diego, 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

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Paul Avila Neves (“Claimant”): Tosh Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent Securities America, Inc. (“Respondent”): Chad Weaver, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

CASE INFORMATION

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

Statement of Answer filed by Respondent on or about: November 5, 2020.
Respondent signed the Submission Agreement: November 5, 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:

1. Expungement of Occurrence Numbers 1461143, 1581096, and 1771147 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false; and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested:

1. Compensatory damages in the amount of \$1.00 be denied; and
2. All forum fees be assessed against Claimant.

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 September 14, 2021, Claimant advised that the customers in Occurrence Numbers 1461143 ("Mr. and Mrs. S"), 1581096 ("Mr. K"), and 1771147 ("Ms. M") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. S, Mrs. S, Mr. K, and Ms. M are collectively referred to as the "Customers".

The Arbitrator conducted a recorded, telephonic hearing on October 5, 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 did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1771147, 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.

The Arbitrator noted that the disputes related to Occurrence Numbers 1461143 and 1581096 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's exhibits, and testimony provided by Claimant at the expungement hearing.

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 Numbers 1461143, 1581096, and 1771147 from registration records maintained by the CRD for Claimant Paul Avila Neves (CRD Number 2019963) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Avila Neves 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.

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Occurrence Number 1461143

Mr. and Mrs. S opened a discretionary brokerage account with Claimant in 2003 and two IRA accounts in 2005. Over the course of many years, Claimant frequently discussed trades and strategies with Mr. and Mrs. S. They received confirmations for each trade executed by Claimant in their brokerage account and the trades were also memorialized on their monthly statements. After the 2007 stock market crash, Mr. and Mrs. S complained in writing, alleging that Claimant had failed to follow their instruction to sell negative performing assets. Following an investigation, Respondent denied the claim, finding that Mr. and Mrs. S had given no such instruction. No further action was taken.

That Mr. and Mrs. S took no further action prompts the conclusion that they did not give a written instruction to sell negative performing assets. In light of the years long history of discussions of trades with Claimant and receipt of confirmations and statements, it beggars belief that they gave any such instruction orally. Their allegation is false and clearly erroneous.

Occurrence Number 1581096

Mr. K and his sister (Ms. M in Occurrence Number 1771147) had inherited a rice farm which they had contracted to sell. Mr. K asked Claimant to identify strategies for minimizing the tax that would become due when the sale of the farm closed. Claimant did

so, and Mr. K chose to engage in a 1031 exchange which required that he invest in “like” real estate. Mr. K did not wish to bear the risk of a relatively small property that they would wholly own, so Claimant presented several larger potential investment properties in which Mr. K would invest with others as tenants in common (“TIC”). After substantial investigation by Mr. K, he selected two in which he invested in 2007. Both properties subsequently declined in value. One declined in value in the wake of the real estate market crash, which began in September 2008. He realized a loss when the board managing the property sold it for considerably less than the original purchase price. The other property, in which Claimant had also invested, declined in value when the investment was exposed as a Ponzi scheme.

Subsequently, Mr. K complained in writing that Claimant had given them “poor advice/poor recommendations” in connection with their 1031 exchange. It appears that the purported basis for this allegation was simply that the investments had declined in value, but a decline in an investment’s value provides no factual basis for an allegation of “poor advice/poor recommendations.” Mr. K eventually withdrew his complaint. Therefore, the allegation is clearly erroneous and should be expunged.

Occurrence Number 1771147

Ms. M and her brother (Mr. K) inherited a rice farm which they had contracted to sell. Following the lead of her brother, Ms. M and her now deceased husband asked Claimant to identify strategies for minimizing the tax that would become due when the sale of the farm closed. Claimant did so, and Ms. M and her husband chose to engage in a 1031 exchange which required that they invest in “like” real estate. Ms. M did not wish to bear the risk of a relatively small property that they would wholly own, so Claimant presented several larger potential investment properties in which Ms. M and her husband would invest with others as TIC. Ms. M selected one in which they invested in 2007. Before they closed on their investment, they learned of new vacancies at the property. Nevertheless, Ms. M and her husband invested in this TIC property. The property declined in value in the wake of the real estate market crash which began in September 2008. As a result, the manager of the property reduced distributions to the investors. A bad situation became worse when the largest tenant of the property vacated its lease in 2014. Before the year was out, the property was in foreclosure.

In early 2015, Ms. M filed a claim in arbitration alleging that Claimant made unsuitable recommendations in connection with her 1031 exchange. Ms. M settled for roughly a quarter of her initial claim, of which Claimant contributed nothing. While the settlement represents less than 28% of the damages sought, it is not a trivial sum. That Respondent paid this sum could suggest that Respondent was aware of some facts that might support Ms. M’s allegation. The documents before the Arbitrator here, however, do not even hint at the existence of such facts. The principal goal of Ms. M and her husband was to minimize the tax that would become due when the sale of the farm she inherited closed. The evidence shows that Claimant identified the principal options for pursuing that goal – in addition to raising the possibility of paying the tax and investing the balance. Ms. M and her husband chose to engage in a 1031 exchange and they chose the property in which they would invest. They stuck with their choice even after they had learned about vacancies at the property, the very phenomenon that would eventually trigger foreclosure. The property in which they invested was only suitable for “accredited

investors,” but Ms. M and her husband were just that. Since the documents before the Arbitrator here do not hint at the existence of facts that might support Ms. M’s allegation of unsuitable recommendations, the allegation is false and clearly 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 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 100.00
Pre-Hearing Conferences: January 6, 2021 1 session
January 26, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: October 5, 2021 1 session

Total Hearing Session Fees = \$ 150.00

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

Mark R. Lee

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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

Mark R. Lee

Mark R. Lee
Sole Public Arbitrator

10/19/2021

Signature Date

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October 20, 2021

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