

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Hector J. Gonzalez

Case Number: 20-03021

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: San Juan, Puerto Rico

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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 Hector J. Gonzalez: Viviana I. Gonzalez-Irizarry, Esq., Toro Colon Mullet, P.S.C., San Juan, Puerto Rico.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama, and Frances Pesquera, Esq., Pietrantonio Mendez & Alvarez, LLC, San Juan, Puerto Rico.

**CASE INFORMATION**

Unopposed Petition for Expungement filed on or about: September 4, 2020.

Hector J. Gonzalez signed the Submission Agreement: September 4, 2020.

Statement of Answer filed by Respondent on or about: October 28, 2020.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: October 27, 2020.

**CASE SUMMARY**

In the Unopposed Petition for Expungement, 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 request for expungement and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Unopposed Petition for Expungement, Claimant requested: expungement of Occurrence Numbers 1965874 and 1982677; and compensatory damages in the amount of \$1.00 from Respondent.

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

At the beginning of 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 or about January 22, 2021, February 15, 2021, and March 17, 2021, Claimant advised that counsel for the customers in Occurrence Numbers 1965874 and 1982677 ("Customer A and Customer B") were served with a copy of the Unopposed Petition for Expungement, notice of the date and time of the expungement hearing and of the Customers' right to participate therein. On or about January 22, 2021, February 15, 2021, and March 17, 2021, Claimant filed with FINRA Dispute Resolution Services, proof of service via email upon counsel for the underlying Customers, advising that counsel for the Customers were served with a copy of the Unopposed Petition for Expungement and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on March 18, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing.

The Customers did not participate in the expungement hearing. Counsel for the Customers stated in an email that the Customers would not participate or appear at 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 Numbers 1965874 and 1982677, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Unopposed Petition for Expungement, along with Exhibits; Claimant's BrokerCheck® Report; Settlement Agreements/General Releases; Claimant's Motion in Compliance with Initial Prehearing Conference Scheduling Order, along with Exhibits; Claimant's Motion Resubmitting General Release for the "Customer B" Action and Underlying

Claimants' Counsel's Notice of No Participation in Expungement Hearing, along with Exhibits; and Claimant's Motion Submitting Underlying Claimants' Notice of No Participation in the Rescheduled Expungement Hearing, along with 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 Numbers 1965874 and 1982677 from registration records maintained by the CRD for Claimant Hector J. Gonzalez (CRD Number 5330726) with the understanding that, pursuant to Notice to Members 04-16, Claimant Hector J. Gonzalez 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

#### Introduction

After being sworn, Claimant provided information, including his experience as Respondent's registered representative and Financial Advisor ("FA") at its Guaynabo office since 2010. Claimant has a total of fourteen years in the financial industry and has been qualified as a Chartered Financial Analyst ("CFA") since 2006.

#### Occurrence Number 1965874

As to Occurrence Number 1965874, Customer A is a Puerto Rico credit union established in 1954 in Santa Isabel, Puerto Rico. Customer A made allegations against Claimant, which are similar to Customer B's allegations made against Claimant in Occurrence Number 1982677. In February of 2011, Claimant met twice with Customer A's President ("President A") to discuss whether it wanted to open an account with Respondent. On February 28, 2011, Customer A did open a non-discretionary account there with the stated objective of "income" and a risk tolerance of "conservative," meaning fixed income. Customer A's President A made the investment decisions for Customer A.

Customer A's President A was replaced by a new president ("President B") not long after the account was opened. Customer A's President B and accountant, were the individuals mainly dealing with Claimant, with Customer A's President B making the investment decisions. Customer A's President B became the entity's president after working there for twenty years. President B's decision-making process relied on many resources other than Claimant and Respondent. Similar to the relationship with Customer B, Customer A told Claimant that it needed fixed income to support its business operations. Just as in the case of Customer B, Customer A decided to purchase Puerto Rico Municipal Bonds ("PRMBs") because they paid better interest rates than could be earned from United States agency bonds ("U.S. agency bonds") and United States municipal bonds ("U.S. municipal bonds").

The Arbitrator found that Claimant's testimony regarding his relationship with Customer A, and matters related to Occurrence Number 1965874, were fully credible. As such, the allegations lodged against Claimant in Occurrence Number 1965874 were factually impossible, clearly erroneous, and false. The Claimant's testimony, and his documentary evidence, were unchallenged. The Arbitrator found the decline in the value of Customer A's investments with Respondent resulted directly from the 2013 PRMBs market collapse and not from Claimant's conduct. As strong evidence that Customer A was satisfied with and valued Claimant's services is the fact that it continued its relationship with Claimant until February of 2019, nearly six years after the 2013 PRMBs market collapse. This relationship also continued between them until about one year after Customer A filed an arbitration claim. The Arbitrator recommends the expungement request of all references to Occurrence Number 1965874 from registration records maintained by the CRD for Claimant.

#### Occurrence Number 1982677

As to Occurrence Number 1982677, Claimant was the FA for Customer B, a credit union in Puerto Rico established in 1953 in Guayanilla. In Customer B's Statement of Claim, Customer B alleged that Claimant made unsuitable recommendations resulting in over-concentration in its account of PRMBs, misrepresented the "true state" of the Puerto Rico economy, failed to disclose risks of investing in PRMBs and other alleged misconduct. Customer B did not name Claimant as a Respondent in Customer B's Statement of Claim. However, because Claimant was mentioned in Customer B's Statement of Claim, Claimant's CRD had to contain that information. Claimant's main contact for Customer B was its Executive President ("EP"). Based upon the EP's representations, Customer B needed a high level of recurring income to stabilize its financial situation which had resulted in part from the 2008 global financial crisis. After their meeting, Customer B opened a non-discretionary account with Claimant and Respondent on August 26, 2010. "Income" was the account's stated objective, along with a "conservative" risk tolerance (fixed income).

Because Customer B had high-yielding debt (member deposits), it needed to invest in high-yielding assets. At the time, Puerto Rico was still experiencing a recession which began in 2006. PRMBs of investment grade complied with Customer B's stated investment objective and risk tolerance, and also was in line with The Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico ("COSSEC") regulatory restrictions and directives. COSSEC was directly involved in Customer B's administration

from the time it opened its account with Respondent until around May of 2012. COSSEC was in full agreement with the purchase of PRMBs as Customer B's co-administrator. In May of 2012, COSSEC announced that it no longer needed to share in the co-administration of Customer B, because Customer B was on the right track to improve its financial position. From the opening of the account in 2010 until May of 2012, around fifty percent of the PRMBs at issue had been purchased while COSSEC was Customer B's co-administrator. Utilizing the same strategy that had been improving Customer B's financial situation, from June of 2012, until June of 2014, Customer B bought more PRMBs of appropriate investment grade. Claimant executed the trades at issue with Customer B's consent in this non-discretionary account.

Claimant recommended to Customer B that it purchase U.S. agency bonds and U.S. municipal bonds to diversify and strengthen its portfolio. However, Customer B routinely decided not to follow Claimant's recommendations because the stateside bonds had less attractive rates of return compared to PRMBs. Customer B did purchase five different U.S. agency bonds between March of 2014, and August of 2015 and two U.S. municipal bonds in June of 2012, and May of 2014.

The Arbitrator concluded that Claimant's testimony demonstrated that the allegations made against him in Occurrence Number 1982677 were factually impossible, clearly erroneous, and false. Claimant's testimony at the expungement hearing not only was fully credible, it was not challenged in any way, including by the Customers in the underlying actions. Any decline in the value of Customer B's investments did not result from Claimant's conduct, or that of Respondent, but rather the collapse of the PRMBs market in the summer of 2013. Additionally, it is undisputed that Claimant had an excellent relationship with Customer B's EP, whom he consulted with approximately two times per month. What also is very telling is the fact that Claimant continued to serve as the FA for Customer B for around a year after Customer B filed an arbitration claim. This was almost six years after the 2013 bond collapse in Puerto Rico. The evidence was clear and convincing, and the Arbitrator recommends the expungement request of all references to Occurrence Number 1982677 from registration records maintained by the CRD for Claimant.

### Conclusion

As to Occurrence Numbers 1965874 and 1982677, the Arbitrator finds that, based on clear and convincing evidence, all three grounds under FINRA Rule 2080 support expungement. The Arbitrator recommends that expungement be granted as to Occurrence Numbers 1965874 and 1982677. Based upon the agreement of the parties, the Arbitrator also found that the hearing forum fees should be assessed against Claimant.

### **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(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

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

February 18, 2021, postponement requested by Claimant = \$ WAIVED

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Total Postponement Fees = \$ WAIVED

The Arbitrator has waived the postponement fees in connection with the February 18, 2021 hearing.

**Last-Minute Cancellation Fees**

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

February 18, 2021, cancellation requested by Claimant = \$ WAIVED

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Total Last-Minute Cancellation Fees = \$ WAIVED

The Arbitrator has waived the last-minute cancellation fees in connection with the February 18, 2021 hearing.

**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: December 30, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: March 18, 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**

Martin A. Feigenbaum

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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**

***Martin A. Feigenbaum***

Martin A. Feigenbaum  
Sole Public Arbitrator

**03/24/2021**

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 24, 2021

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