

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Thomas John Briguccia, Jr.

Case Number: 20-03027

vs.

Respondent

Spartan Capital Securities, LLC

Hearing Site: Boca Raton, Florida

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.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Thomas John Briguccia, Jr.: Debra A. Jenks, Esq., Jenks & Harvey LLP, West Palm Beach, Florida.

For Respondent Spartan Capital Securities, LLC: Kim Monchik, CAO, Spartan Capital Securities, LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 4, 2020.

Thomas John Briguccia, Jr. signed the Submission Agreement: September 4, 2020.

Respondent Spartan Capital Securities, LLC did not file a Statement of Answer and did not sign the Submission Agreement.

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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1881657 (“Customers A”), 1476650 and 1523456 (“Customers B”), 1388587 (“Customer C”), 1208335 (“Customers D”), 1183741 (“Customers E”), 1078872 (“Customer F”), 1059088 (“Customers G”), and 1440828 (“Customers H”), hereinafter collectively referred to as the “Customers;” recovery of \$1.00 from Respondent; and such other and further relief as the Arbitrator deems just and proper.

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

Respondent Spartan Capital Securities, LLC did not file a Statement of Answer. The Arbitrator determined that Respondent Spartan Capital Securities, LLC was served with the Claim Notification letter dated September 8, 2020, and the Overdue Notice dated October 29, 2020, by regular mail. The Arbitrator also determined that Respondent Spartan Capital Securities, LLC was served with the Notification of Panel dated November 20, 2020, by regular mail.

The Claim Notification letter notified Respondent Spartan Capital Securities, LLC that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent Spartan Capital Securities, LLC failed to register for the DR Portal.

The Arbitrator determined that Respondent Spartan Capital Securities, LLC is, therefore, bound by the Arbitrator’s ruling and determination.

On May 6, 2021 and May 19, 2021, Claimant advised that Customers A, Customers B, Customer C, Customers D, Customer F, Customers G, and Customers H, were 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 May 26, 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 Arbitrator found that Respondent had notice of the expungement request and hearing.

The Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers, with the exception of Customers E, had notice of the expungement request and hearing.

On July 8, 2021, Claimant advised that he was unable to locate any office or home address for Customers E. Claimant detailed the efforts undertaken to locate Customers E. The Arbitrator determined that a good faith and acceptable effort was made by Claimant to locate and provide notice to Customers E.

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 1881657 and 1208335, 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 contributed to the settlement amounts. The Arbitrator noted that Claimant's contributions to the settlement amounts were solely due to Claimant's agreement with his prior firm.

The Arbitrator did not review settlement documentation related to Occurrence Numbers 1523456, 1388587, 1183741, and 1078872, but did review the settlement information reported on Claimant's CRD Report. Claimant was unable to obtain a copy of the settlement documentation, and the Arbitrator determined that Claimant's efforts to obtain them were sufficient. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant contributed to the settlement amounts. The Arbitrator noted that Claimant's contributions to the settlement amounts were solely due to Claimant's agreement with his prior firm.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1059088, 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. The Arbitrator noted that Claimant's CRD Report shows that Claimant made an individual contribution to the settlement amount, but the Settlement Agreement states that the firm would be making the settlement payment in installments. Claimant testified that he has no record of paying anything toward the settlement and does not believe that he did so.

The Arbitrator noted that the disputes related to Occurrence Numbers 1476650 and 1440828 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 credible and un rebutted testimony, as well as the documentary evidence.

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 1881657, 1476650, 1523456, 1388587, 1208335, 1183741, 1078872, 1059088, and

1440828 from registration records maintained by the CRD for Claimant Thomas John Briguccia, Jr. (CRD Number 2311865) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas John Briguccia, Jr. 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, 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 1881657 (Case Number 14-02641):

Occurrence Number 1881657 was reported as a FINRA arbitration claim filed on May 13, 2016. The former customers who filed the claim were identified by name at the final hearing but will be referred to in this Award as Customers A. Customers A alleged that they sustained trading losses in equities. The arbitration claim was settled on May 30, 2017, with Claimant contributing half of the settlement amount. The Statement of Claim, Answer, and Settlement Agreement were discussed (and admitted into evidence), as were the underlying facts, Claimant's knowledge of Customers A, and the history of the underlying equity security in which Customers A invested. Due to Customers A's friendships and/or familial links, they filed a single claim, with two individuals suing on behalf of their companies, and two individuals suing in their own capacities.

Claimant presented his Registered Representative Agreement with his firm at the time, dated September 25, 2009 (which was admitted into evidence), pursuant to which the firm could require him to contribute to a settlement or repay the firm for legal fees and settlements. Since the Settlement Agreement included a release for an insurance carrier for the firm, Claimant believes that the contribution required of him was related to the firm's insurance deductible.

Notice of the expungement action was sent to former counsel for Customers A by email, and counsel accepted receipt of the notice. Customers A did not contact Claimant's counsel or appear at the expungement hearing.

Claimant testified at some length regarding these investors, the underlying accounts, the main equity security complained of, and his relationships with Customers A. The un rebutted and credible testimony of Claimant established the considerable sophistication of Customers A, their understanding and informed acceptance of the risks of the investment, an investment with which Customers A were enamored due to the analysis of one or more of them and not due to Claimant, that the losses were the result of the market and risks associated with the investment activity and were not due to the actions or inactions of Claimant. The contribution

by Claimant to the settlement was imposed by virtue of his contractual relationship with his employer who determined to settle the claim.

The Arbitrator recommends the expungement of Occurrence Number 1881657 from the registration records maintained by the CRD for Claimant, as the claims were false.

Occurrence Number 1476650 (Superior Court of California, County of San Diego Case Number 37-2009-0009671-CU-FR=CTL):

Occurrence Number 1476650 involved a lawsuit reported on September 11, 2009. The former customers who filed the lawsuit were identified by name at the final hearing but will be referred to in this Award as Customers B. The evidence established that the matter was not pending as reported on Claimant's CRD Record. The matter had been dismissed based on a review of the Docket Report of the Superior Court of California, County of San Diego, and a Motion to Compel Arbitration was heard on or about November 13, 2009 (which were admitted into evidence). The matter was ordered to arbitration (and was the subject of an arbitration) and the court case was dismissed.

Notice of the expungement action was sent by email to former counsel for Customers B. Additionally, notice was sent to Customers B directly by certified mail, return receipt requested, and by U.S. mail based on an address in the public record after former counsel for Customers B declined to forward the notice to them. Customers B did not contact Claimant's counsel or appear at the expungement hearing.

The listing of this matter on Claimant's CRD Record as "pending" is clearly erroneous and the arbitration which followed is the subject of Occurrence Number 1523456 (addressed next). Therefore, the Arbitrator recommends expungement of Occurrence Number 1476650 from the registration records maintained by the CRD for Claimant.

Occurrence Number 1523456 (Case Number 10-03390):

Occurrence Number 1523456 was reported as a FINRA arbitration claim filed on April 10, 2011. The former customers who filed the claim were identified by name at the final hearing but will be referred to in this Award as Customers B. Following the dismissal of Customers B's lawsuit (Occurrence Number 1476650) and the requirement they pursue their claim in arbitration, the Arbitrator reviewed the Statement of Claim (which was admitted into evidence). While Claimant was unable to obtain a copy of the Statement of Answer or Settlement Agreement, the matter was reported on Claimant's CRD Record as settled on June 30, 2011, or a little less than three months after the claim was filed. Claimant presented the portion of his Registered Representative Agreement with his prior firm (which was admitted into evidence) regarding Complaints, Arbitrations and Settlements and Indemnification. The CRD Record shows that the claim was for monetary damages and that Claimant paid a nominal amount to settle the claim, which was required by his firm.

Notice of the expungement action was sent by email to former counsel for Customers B. Additionally, notice was sent to Customers B directly by certified mail, return receipt requested, and by U.S. mail based on an address in the public record after former counsel for Customers B declined to forward the notice to them. Customers B did not contact Claimant's counsel or appear at the expungement hearing.

Claimant testified that the underlying claim arose following the opening of Customers B's joint account in August 2008 following a referral by the sister of Customer B1. Customer B1, the wife, directed the account. Customer B1 told Claimant she was sending in a large amount of money to invest in stocks, similar to what her sister was buying. After specifically requesting recommendations of tech equities, they invested in Baidu, Micron Tech, Apple and VMware. The trades settled but Customers B had sent less than what they previously stated. Customers B still needed to deposit the remainder, or they would be on margin. Customers B never sent the remainder but held the stocks during that very volatile market period from September to December of 2008. Customers B did not listen to Claimant when he advised them to bring in the remaining monies, in order to eliminate the extra volatility created by the margin. Customers B transferred the account out in January of 2009. Claimant testified that the investment activities were suitable for Customers B, given the relatively small percentage of their portfolio and net worth, their age, income, and risk tolerance. Customers B had invested during an unusually volatile time in the market and did not deposit the amount of money they said that they would, and then experienced some market losses.

The Arbitrator recommends the expungement of Occurrence Number 1523456 from the registration records maintained by the CRD for Claimant, as the claim is false. There was no evidence of any sales practice violation by Claimant.

Occurrence Number 1388587:

Occurrence Number 1388587 was reported as a complaint being made by telephone on December 10, 2007. The customer was identified by name at the final hearing but will be referred to in this Award as Customer C. Customer C was seeking a monetary payment. While Claimant was unable to obtain a copy of the notes regarding this telephonic demand or any settlement documents, the matter was reported as settled on the Claimant's CRD Record on January 15, 2008. Claimant presented the portion of his Registered Representative Agreement with his prior firm (which was admitted into evidence) regarding Complaints, Arbitrations and Settlements and Indemnification. The demand was settled for a nominal amount, with Claimant contributing around half of the settlement amount, as required by his firm.

Notice of the expungement request was sent to three of Customer C's email addresses, and one email server confirmed that the notice was received. Customer C did not contact Claimant's counsel or appear at the expungement hearing.

Claimant testified that Customer C was a resident of the United Kingdom, was wealthy, and had a trading account with Claimant and his firm. Customer C complained about the commissions he was charged for trading and felt that he should have been given a rebate or reduced charge. Customer C complained verbally over the phone and did not submit a written complaint. This settlement was reached within five weeks of the telephone call complaining about the expenses. After Customer C received the settlement amount, he continued to be a customer of Claimant and the firm. The U4 is consistent with the Claimant's un rebutted and credible testimony. It reflects that the allegation was "[disappointing] performance of investments," that the complaint was made in a phone call,

and the customer remained with the firm. There was simply no evidence of a sales practice violation.

The Arbitrator recommends the expungement of Occurrence Number 1388587 from the registration records maintained by the CRD for Claimant, as the claim is false and the reporting of it as a violation was clearly erroneous.

Occurrence Number 1208335 (Case Number 04-04706):

Occurrence Number 1208335 was reported as an NASD arbitration claim filed on July 8, 2004. The customers were identified by name at the final hearing but for purposes of this Award are referred to as Customers D. The claim was reported as settled about ten (10) months later on May 7, 2005. The Statement of Claim, Statement of Answer, and Settlement Agreement were discussed (and admitted into evidence). Claimant presented the portion of his Registered Representative Agreement with his prior firm (which was admitted into evidence) regarding Complaints, Arbitrations and Settlements and Indemnification. The claim was monetary damages. The claim was settled for much less than what was sought, with Claimant contributing around half of the settlement amount, as required by his firm.

Counsel for Claimant spoke to Customer D2, the wife of Customer D1, and provided Customers D with notice of the expungement request by email. Customer D2 acknowledged receipt of the email and notice, confirmed by phone that she and her husband would not be participating in the expungement hearing, and provided their copy of the Settlement Agreement to counsel for Claimant. Claimant testified to the facts set forth in the Statement of Answer; that Customers D were sophisticated and had invested in the market for years. Customer D1 was an attorney. When Customers D opened their account in December of 1997, they were 54 and 51 years old respectively. They had a high stated net worth, a high stated liquid net worth, and a high annual income. Claimant testified that he put together a portfolio of some blue-chip growth companies, as well as blue chip technology companies. Customers D had invested in these types of securities at a prior firm. It was not until June of 2002 that Customers D complained about the value of their retail and individual retirement accounts ("IRA") following the market corrections of 2000-2001. A significant part of the decline in account value was not due to market losses but because Customers D withdrew more money from their accounts than what could reasonably be generated in returns on their investments. The unrebutted and credible testimony of Claimant established that his recommendations (which he testified were followed more often than not but rejected about 25% of the time) were suitable and consistent with the sophistication, resources, and risk tolerance of the customers. There was no evidence of a sales practice violation.

The Arbitrator recommends the expungement of Occurrence Number 1208335 from the registration records maintained by the CRD for Claimant, as the claims are false.

Occurrence Number 1183741:

Occurrence Number 1183741 was reported as a verbal complaint made to the firm in November of 2003. The customer and his company were identified by name at the final hearing but for purposes of this Award are referred to as Customers E. The allegations were for "poor performance" and the verbal demand was for monetary damages. While Claimant was unable to obtain a copy of either the notes regarding Customers E's telephonic demand

or the settlement documents, the matter was reported as settled on Claimant's CRD Record on February 23, 2004. Claimant presented the portion of his Registered Representative Agreement with his prior firm (which was admitted into evidence) regarding Complaints, Arbitrations and Settlements and Indemnification. The demand was settled for a much lesser amount than what was request, with Claimant contributing over half of the settlement amount, as required by his firm.

Claimant testified that neither he nor the firm committed any wrongdoing in this account. Any decline in value was caused by movements in the stock market. Customers E were introduced to Claimant through another of Claimant's customers based in the United Kingdom. Customers E stated that they had a significant amount of investment capital in various trusts but that they were not happy with the performance. They were looking for a high level of return and were willing to invest in blue-chip technology growth companies. Customers E also invested in some investment banking deals that did not perform well. When their account did not perform to their expectation, they called the firm to complain. Claimant was not in favor of paying Customers E money based on their demand, but the firm did not want to incur the expense of a potential arbitration. No written demand was made, and no arbitration claim was filed.

While the significant sum paid to Customers E, including the significant contribution paid by Claimant, are troubling as they reflect on the propriety of expungement, given the credible and unrebutted testimony of Claimant, the Arbitrator recommends the expungement of Occurrence Number 1183741 from the registration records maintained by the CRD for Claimant, as the claim is false.

Occurrence Number 1078872 (Case Number 02-03052):

Occurrence Number 1078872 was reported as an NASD arbitration claim filed on June 10, 2002. The customer was identified by name at the final hearing but for purposes of this Award is referred to as Customer F. The Statement of Claim, Statement of Answer, and Notice of Dismissal were discussed (and admitted into evidence). Claimant was unable to obtain a copy of the Settlement Agreement. Claimant presented the portion of his Registered Representative Agreement with his prior firm (which was admitted into evidence) regarding Complaints, Arbitrations and Settlements and Indemnification. The claim was for monetary damages. The claim was settled for less than half of what was sought on August 1, 2003, about 14 months after the claim was filed, with Claimant contributing less than half of the settlement amount, as required by his firm.

Notice of the expungement action was sent to former counsel for Customer F by email, and the email did not fail or otherwise bounce back. Neither former counsel for Customer F, nor Customer F, contacted Claimant's counsel or appeared at the expungement hearing.

Claimant testified consistently with the facts as stated in the Statement of Answer. Claimant testified that Customer F had been a customer of his from 1998 to 2005. Customer F had been referred to Claimant by another of Claimant's customers from the United Kingdom. Customer F had at least three years of investment experience. He had a high net worth, as well as high annual income. Customer F was happy with his investments and portfolio. However, he started to draw money out of the account and started using margin so he could take withdrawals and still hold stocks such as America Online, Cisco Systems, Microsoft,

and Qualcomm. Customer F's portfolio was adversely impacted by the market in late 2000. Customer F insisted that his account performance should be measured from the "high water" mark and not against the money that he actually invested. Claimant did not believe that the case should have been settled but his firm settled the case and required his contribution towards the settlement. While the amount of the settlement and the substantial contribution of Claimant give pause, the unrebutted and credible testimony of Claimant established there was no sales practice violation or other wrongdoing on his part.

The Arbitrator recommends the expungement of Occurrence Number 1078872 from the registration records maintained by the CRD for Claimant, as the claim is false.

Occurrence Number 1059088 (Case Number 00-05683):

Occurrence Number 1059088 was reported as an NASD arbitration claim filed on December 20, 2000. The customer and his company were identified by name at the final hearing but for purposes of this Award are referred to as Customers G. The Statement of Claim, Statement of Answer, and Settlement Agreement were discussed (and admitted into evidence). Claimant presented the portion of his Registered Representative Agreement with his prior firm (which was admitted into evidence) regarding Complaints, Arbitrations and Settlements and Indemnification. The claim was for monetary damages. While the CRD Report shows that both the customer and his company were complaining, the Statement of Claim was filed only on behalf of the corporate entity. The claim was settled for a much lesser amount than what was sought on April 17, 2002. While the CRD reports that Claimant made an individual contribution for the settlement amount, the Settlement Agreement states that the firm would be making the settlement payment in installments. Claimant has no record of paying anything toward the settlement and does not believe that he did so.

Notice of the expungement action was sent to former counsel for Customers G by email, and the email did not fail or otherwise bounce back. Neither former counsel for Customers G, nor Customers G, contacted Claimant's counsel or appeared at the expungement hearing.

Claimant adopted the facts as stated in the Statement of Answer. Claimant testified that the principal of Customers G sought to open an account with Claimant based on the referral of one of Claimant's customers from the United Kingdom. Customers G invested in Qualcomm and Cisco Systems. These investments were made at or very near to the top of the market right before the "tech" bubble burst. Customers G were unhappy about the decline in value and filed an arbitration claim. Claimant's unrebutted and credible testimony established that any recommendations were suitable and there was no evidence of a sales practice violation.

The Arbitrator recommends the expungement of Occurrence Number 1059088 from the registration records maintained by the CRD for Claimant, as the allegation is false.

Occurrence Number 1440828:

Occurrence Number 1440828 involved a written complaint to the firm where Claimant was registered on January 29, 2009. The former customer and his company were identified by name at the final hearing but for purposes of this Award are referred to as Customers H. The testimony of Claimant was that to the best of his knowledge, his former firm resolved any dispute directly with Customers H with no contribution of settlement funds from Claimant.

Claimant testified that on or about February 10, 2009, he executed a Tender Agreement with his then firm (which was admitted into evidence), and assigned any ownership interest in the firm, pursuant to which the firm agreed that it would not seek indemnification from Claimant if Customers H were to pursue a claim. There was no evidence such a claim was pursued.

Notice of the expungement action was sent to Customers H by email through their agent, who agreed to receive the notice. Customers H did not contact Claimant’s counsel or appear at the expungement hearing.

The Arbitrator finds that the reporting of this matter as “pending” is clearly erroneous. The Arbitrator recommends the expungement of Occurrence Number 1440828 from the registration records maintained by the CRD for 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

*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 events giving rise to the dispute. Accordingly, as a party, Respondent Spartan Capital Securities, LLC 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 6, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 26, 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

Will Murphy

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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

Will Murphy

Will Murphy
Sole Public Arbitrator

07/12/2021

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.

July 12, 2021

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