

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

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In the Matter of the Arbitration Between:

Claimant  
Joseph Sylvester Sturniolo

Case Number: 20-03040

vs.

Respondent  
First Allied Securities, Inc.

Hearing Site: Denver, Colorado

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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

**REPRESENTATION OF PARTIES**

For Claimant Joseph Sylvester Sturniolo (“Claimant”): Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent First Allied Securities, Inc. (“Respondent”): Jeremy Wooden, Esq., Cetera Financial Group, El Segundo, California.

**CASE INFORMATION**

Statement of Claim filed on or about: September 8, 2020.  
Claimant signed the Submission Agreement: September 8, 2020.

Statement of Answer filed by Respondent on or about: October 28, 2020.  
Respondent signed the Submission Agreement: October 8, 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 1054639 and 1174107 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
  - a. The claim, allegation, or information is factually impossible or clearly erroneous; and/or
  - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
  - c. The claim, allegation, or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. A statement from the Chairperson on the issue of whether to order recommending that the customer complaints be expunged from Claimant's CRD records in the form required by FINRA Rule 2080;
2. Compensatory damages in the amount of \$1.00 be denied; and
3. All costs and 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 March 17, 2021, Claimant advised that the customers in Occurrence Numbers 1054639 and 1174107 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 22, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On April 27, 2021, the parties filed a Joint Stipulation and Proposed Order Relieving Respondent of Obligation to Attend April 29, 2021 Expungement Hearing ("Joint Stipulation"). In the Joint Stipulation, Respondent stated that it did not oppose Claimant's expungement request and it will not appear at the expungement hearing. On the same day, the Arbitrator granted the Joint Stipulation.

The Arbitrator conducted a recorded, telephonic hearing on April 29, 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 Customers also 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 noted that the disputes related to Occurrence Numbers 1054639 and 1174107 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: pleadings; Claimant's BrokerCheck® Report; and Claimant's testimony.

### **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 1054639 and 1174107 from registration records maintained by the CRD for Claimant Joseph Sylvester Sturniolo (CRD Number 1094557) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joseph Sylvester Sturniolo 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 1054639**

The customers, a couple well-versed in the tax consequences of selling appreciated stock, were required to pay a capital gains tax of about \$50,000.00. They wanted Claimant to pay the tax, which was not reasonable or necessary. Claimant declined and the customers sent a written demand to Respondent. It was declined and no further action resulted. The customers were wrong. Claimant committed no wrongful act. This claim was wrong and clearly erroneous.

#### **Occurrence Number 1174107**

This involved a customer who did not fully understand the terms of her annuity contract. The decline in value she was worried about had not occurred and no formal action was filed as the guaranty of value adequately protected her investment. Claimant did no wrong and the complaint is clearly erroneous and wrong.

Both complaints should be expunged. Claimant correctly handled both matters.

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 firms that employed the associated person at the time of the events 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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: January 15, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 29, 2021	1 session	
<b>Total Hearing Session Fees</b>	<b>= \$</b>	<b>100.00</b>

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**

Philip J. Glick

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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**

***Philip J. Glick***

Philip J. Glick  
Sole Public Arbitrator

**05/14/2021**

Signature Date

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May 17, 2021

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