

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Earl Mabe

Case Number: 20-03073

vs.

Respondent
H. Beck, Inc.

Hearing Site: Houston, Texas

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 Robert Earl Mabe (“Claimant”): Brian Luther, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent H. Beck, Inc. (“Respondent”): Matt Winterhalter, Esq., H. Beck, Inc., Rockville, Maryland.

CASE INFORMATION

Statement of Claim filed on or about: September 9, 2020.
Claimant signed the Submission Agreement: September 9, 2020.

Statement of Answer filed on or about: September 29, 2020.
Respondent signed the Submission Agreement: September 29, 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 denied any allegation of wrongdoing but took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1975151 and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that the Arbitrator award no damages and assess all forum fees 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 March 1, 2021, Claimant advised that the customer in Occurrence Number 1975151 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On March 22, 2021, Claimant filed a copy of the USPS tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on March 23, 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, took no position on the request for expungement.

The Customer 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 1975151 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, Statement of Claim, Claimant’s BrokerCheck® Report, and Claimant’s 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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1975151 from registration records maintained by the CRD for Claimant Robert Earl Mabe (CRD Number 2542849) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Robert Earl Mabe 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 finding of fact:

The claim, allegation, or information is false.

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

When the Customer first met with Claimant in 2013, the Customer informed Claimant that he wanted to invest funds in order to leave assets for his children after he died. He had no debt and received Social Security payments and a pension, so he did not need additional income. In addition to making investments in brokerage accounts, Claimant advised that a larger amount of the Customer’s funds be placed in a variable annuity with a guaranteed lifetime benefit rider. Claimant explained the workings of the variable annuity, noting that it would preserve the Customer’s initial investment for his children, so that they would get market value of the investment after he died or, at least, the amount initially invested. The guaranteed lifetime benefit rider, while not a benefit to his children, would provide income for the Customer should his circumstances change. The Customer signed all papers acknowledging his understanding of the investment. In or about February 2016, the Customer told Claimant that he’d had discussions with other people and expressed concern that the purchased variable annuity was taking money from his children. The Customer ultimately removed all investments from Claimant’s firm.

None of the evidence provided by Claimant supports the Customer’s complaint. The Customer was fully aware of the limitations of the investment strategy with which he was presented and agreed to it, as his initials and signature on the documentation attests. The Arbitrator also finds that the variable annuity was suitable at the time it was recommended.

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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee = \$ 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 @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: December 28, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 23, 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

Daniel J. Pagnano

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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

Daniel J. Pagnano

Daniel J. Pagnano
Sole Public Arbitrator

03/25/2021

Signature Date

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March 25, 2021

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