

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David S. Tam

Case Number: 20-03092

vs.

Respondent
Edward Jones

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant David S. Tam (“Claimant”): Samantha D. Parrish, Esq., Keesal, Young & Logan, Long Beach, California.

For Respondent Edward Jones (“Respondent”): Darren Goodman, Esq., Edward D. Jones & Co., L.P., Tempe, Arizona.

CASE INFORMATION

Statement of Claim filed on or about: September 9, 2020.
Claimant signed the Submission Agreement: September 4, 2020.

Statement of Answer filed on or about: November 3, 2020.
Respondent signed the Submission Agreement: November 4, 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 made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2011289 pursuant to FINRA Rule 2080 from his CRD records; and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent opposed any claim for damages.

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 4, 2021, Claimant advised that the customer in Occurrence Number 2011289 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 9, 2021, Claimant filed notice with proof of delivery that the Customer was 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 April 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 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 2011289 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 Statement of Claim with exhibits; Claimant’s proof of delivery of notice of hearing on the Customer; Claimant’s BrokerCheck® Report; Claimant’s testimony; Respondent’s Statement of Answer; and Respondent’s statement of non-opposition.

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 Number 2011289 from registration records maintained by the CRD for Claimant David S. Tam (CRD Number 4625284) with the understanding that, pursuant to Notice to Members 04-16, Claimant David S. Tam 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 factually impossible or clearly erroneous.

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

On or around January 2018, the Customer was referred to Claimant by mutual friends as a potential client. She was looking to invest the proceeds from the sale of inherited property. She expressed to Claimant that she had low risk tolerance and intended for the funds to meet her living expenses through retirement. Based on her investor profile, Claimant recommended a conservative portfolio with 65% fixed income and 35% equity with a projected time-horizon of 49 years. The portfolio was projected to provide a 4-6% annual rate of return.

Claimant explained that due to market conditions, the value of the portfolio could fluctuate from up 17% to down 9%. The Customer understood and acknowledged the risks associated with her investment strategy and invested the proceeds.

Over the next several months, the Customer expressed that she was uncomfortable with the fluctuations in her portfolio. Claimant reminded her that short term fluctuations in the market were to be expected and that her investment strategy was focused on long-term sustainability. Accordingly, Claimant advised her to remain invested in the market and ride out the fluctuation. However, the Customer's risk aversion was so strong that she opted to pull her funds from Respondent in October 2018.

In December 2018, the Customer sent an email to Respondent's client relations department complaining that Claimant offered poor advice by recommending that she remain invested during the market downturn. Respondent investigated the complaint and ultimately denied the Customer's claims. There was no settlement or any further contact from the Customer.

The Customer stated financial objectives and risk tolerance and Claimant recommended a well-balanced, conservative portfolio in order to meet those objectives. That the investments worked out less advantageously than hoped for is of no consequence: a broker is not required to be prophetic.

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 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
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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 6, 2021	1 session	

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

Total Hearing Session Fees	=\$	100.00
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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

Robert E. Jenks

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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

Robert E. Jenks

Robert E. Jenks
Sole Public Arbitrator

04/12/2021

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.

April 13, 2021

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