

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Virgil John Threlkeld

Case Number: 20-03093

vs.

Respondent
First Allied Securities, Inc.

Hearing Site: San Francisco, 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

REPRESENTATION OF PARTIES

For Claimant Virgil John Threlkeld (“Claimant”): David Monsour, Esq., Barr & Young Attorneys, Danville, California.

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 9, 2020.
Claimant signed the Submission Agreement: September 9, 2020.

Statement of Answer filed by Respondent on or about: November 6, 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 Number 1977926 from his CRD records pursuant to FINRA Rule 2080;
2. Compensatory damages in the amount of \$50.00; and
3. Such other relief as the Arbitrator deems just and proper.

In the Statement of Answer, Respondent requested:

1. A statement from the Chairperson on the issue of whether to order recommending the customer complaints be expunged from Claimant's CRD records in the form required by FINRA Rule 2080;
2. Denial of Claimant's request for compensatory damages; and
3. An order that all forum costs and fees are assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On January 20, 2021, Claimant advised that the customer in Occurrence Number 1977926 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On February 10, 2021, the Customer submitted a letter to FINRA in which he opposed Claimant's request for expungement.

The Arbitrator conducted a recorded telephonic hearing on February 26, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The Customer did not participate in the expungement hearing but opposed the expungement request. 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 has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation, 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 request for expungement and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the Statement of Answer; Claimant's BrokerCheck® Report; the settlement agreement; Claimant's exhibits; Customer's correspondence to FINRA; and Claimant's testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for \$50.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1977926) from registration records maintained by the CRD for Claimant Virgil John Threlkeld (CRD Number 2811386) with the understanding that, pursuant to Notice to Members 04-16, Claimant Virgil John Threlkeld 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; and

The claim, allegation, or information is false.

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

The Customer filed a claim with FINRA in April 2018 against Respondent alleging that certain Alternative Investments recommended by Respondent were not suitable for his IRA accounts. Evidence shows that the Customer was a sophisticated and accredited investor with over 25 years of investment experience. These investments were made at various times from 2011 to 2015. The Customer closely monitored the performance of these investments compared to the S&P 500. The Customer did not raise concerns about these investments until May 15, 2015. The Customer asserted that the Alternative Investments violated his moderate risk tolerance. This is false. Early in their relationship (September 2011), the Customer added to his risk profile in his traditional IRA an objective of "speculation" and a "high" risk tolerance. Most of these investments were made in that IRA account.

Claimant had detailed discussions with the Customer about the risks, benefits, costs, and suitability of each of these investments to the Customer's investment objectives. Each of these investments required the Customer's prior authorization. Before giving his authorization, the Customer was provided with detailed disclosure documents, including a prospectus or PPM and in most cases, an Investor Representation Letter, a Private Investment Form, and a Subscription Agreement. These documents detailed the risks and costs of these investments. The Customer alleged that he was not told that Claimant received commissions from the sponsor of these investments. This is false. The

Investment Disclosure Letter disclosed that "First Allied and your Financial Advisor will receive an aggregate commission of up to seven percent (7%) of the amount of your investment." Significantly, the Customer signed these various documents indicating that he had read them and understood their terms.

Claimant ceased managing the Customer's accounts in June, 2015. In April 2018, the Customer filed his claim against Respondent. The Customer did not name Claimant as a party to that arbitration. The Customer alleged damages of \$100,000-\$499,000 but did not identify any net out of pocket losses or include any of the gains made on these investments. This was because these investments did "remarkably well". In October 2018, Respondent settled with the Customer for less than the cost of defense. Claimant did not contribute to the settlement.

3. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure ("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(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
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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: February 26, 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

David J. Romanski

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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

David J. Romanski

David J. Romanski
Sole Public Arbitrator

03/22/2021

Signature Date

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March 22, 2021

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