

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Calvin

Case Number: 20-03097

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

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

REPRESENTATION OF PARTIES

For Claimant Michael Calvin (“Claimant”): Frances Menzer, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Respondent”): Joelle A. Simms, Esq. Bressler, Amery & Ross, P.C., Dallas, Texas.

CASE INFORMATION

Statement of Claim filed on or about: September 10, 2020.
Claimant signed the Submission Agreement: September 9, 2020.

Statement of Answer filed on or about: November 10, 2020.
Respondent signed the Submission Agreement: November 10, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 2065679 and 2082671, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested denial of Claimant's request for \$1.00 in compensatory damages.

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 February 8, 2021, Claimant advised that the customers in Occurrence Numbers 2065679 and 2082671 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). On February 15, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed a copy of the FedEx tracking information available online for the Notices.

On May 7, 2021, Claimant filed an Affidavit signed by one of the customers in Occurrence Number 2065679, which supported Claimant's expungement request.

The Arbitrator conducted a recorded, telephonic hearing on June 2, 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 Customers 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 also reviewed the settlement documentation related to Occurrence Number 2065679, 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 and that Claimant did not contribute to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 2082671 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: 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 2065679 and 2082671 from registration records maintained by the CRD for Claimant Michael Calvin (CRD Number 3269670) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael Calvin 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 Customers were sophisticated investors. The securities, the investment strategy, and the fees for the accounts were explained very clearly to the Customers. The Customers made the ultimate decisions with respect to their portfolios. Further, all involved knew the risks and how market volatility could affect the portfolio.

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(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 @ \$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: June 2, 2021	1 session		
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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

Brian James Tagtmeier

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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

Brian James Tagtmeier

Brian James Tagtmeier
Sole Public Arbitrator

06/14/2021

Signature Date

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June 14, 2021

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