

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Phil Scott

Case Number: 20-03102

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Seattle, Washington

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 Phil Scott (“Claimant”): Harris Freedman, Esq. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Sarah K. Yates, Esq., and Joel Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

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: October 30, 2020.
Respondent signed the Submission Agreement: October 30, 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 the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1009972, 1439103, 1593601, and 1876654 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 that Claimant's request for \$1.00 in compensatory damages be denied.

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 January 20, 2021, Claimant filed an Affidavit stating that the customer in Occurrence Number 1439103 could not be located using Lexis Nexis database, Respondent did not have any last known contact information of the customer, and Respondent was unable to provide any new information to assist with the search. Thus, Claimant was unable to serve the customer with the Statement of Claim and notice of the date and time of the expungement hearing. The arbitrator found that Claimant made sufficient effort to serve the customer.

On January 26, 2021, Claimant filed an Affidavit confirming that the customers in Occurrence Numbers 1009972, 1593601, and 1876654 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant advised and included in the Affidavit that the one of the customers in Occurrence Number 1593601 is deceased.

The Arbitrator conducted a recorded, telephonic hearing on April 20, 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 Customers did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing. The customer in Occurrence Number 1009972 submitted an e-mail opposing Claimant's request for expungement.

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 documentations related to Occurrence Numbers 1593601 and 1876654, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the disputes related to Occurrence Numbers 1009972 and 1439103, were not settled and, therefore, there were no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings, Claimant's exhibits, settlement agreements, 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. Claimant's request for expungement of Occurrence Number 1009972 from his registration records maintained by the CRD is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1439103, 1593601, and 1876654 from registration records maintained by the CRD for Claimant Phil Scott (CRD Number 1306585) with the understanding that, pursuant to Notice to Members 04-16, Claimant Phil Scott 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:

Occurrence Number 1439103

The Arbitrator finds that the customer's claims and allegations are false and/or clearly erroneous.

The customers in this occurrence are husband and wife: the wife complained that a position held in their account was unsuitable – asserting that the company in issue had contributed to an organization of which she did not approve and wanted the position sold.

The testimonial evidence shows: 1) that the husband later contacted Claimant and did not want the position sold; 2) that the subject position had a substantial gain in the account; 3) that the customers did not lose any money; and 4) that any unhappiness with the position was not with its financial suitability but was a political matter. Based upon the evidence, the Arbitrator finds that the claim and allegation are false and clearly erroneous and expungement is appropriate.

Occurrence Number 1593601

The Arbitrator finds that the customers' claims and allegations are false.

This occurrence arises out of an account inherited by two sisters – the account was evenly divided between the sisters with each having their own account. The customers alleged unsuitability, misrepresentation, and over concentration into certain sectors of the market – causing lower returns than expected. The evidence, however, shows that; 1) the customers did not lose any money; 2) their accounts grew by approximately \$774,000 over time; and 3) one of the sisters drew down her account by approximately \$14,000 per month until approximately \$1,200,000 was withdrawn. The evidence further shows that the customers acknowledged in writing that their goals aligned with the portfolio and concentration of equities and sectors selected.

This occurrence was settled in a previous and separate arbitration. Claimant was not a named party in the arbitration and he did not contribute to the settlement. Based upon the evidence, the Arbitrator finds that the claims and allegations of unsuitability, misrepresentation, and over concentration are false and expungement is appropriate.

Occurrence Number 1876654

The Arbitrator finds that the customers' claims and allegations are false.

The customers in this occurrence alleged unsuitability, misrepresentation, omission of material facts, and over concentration. More specifically, they held positions in the energy sector, among others, in pipeline companies and became unhappy when the energy sector fell in or about 2015. The evidence shows that: 1) the customers signed several documents in 2013 stating that they understood their investments would be more concentrated, that such portfolios have more risk, and that this aligned with their risk tolerance and investment objectives; and 2) the customers did not lose any money. In short, the documentary evidence signed by the customers directly contradicts their allegations. Based on the evidence, the Arbitrator finds that the customers' claims are not well taken.

This occurrence was settled in a previous and separate arbitration. Claimant was not a named party in the arbitration and he did not contribute to the settlement. Based upon the evidence, the Arbitrator finds that the claims and allegations of unsuitability, misrepresentation, omission of material fact, and over concentration are false and expungement is appropriate.

3. 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 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: December 31, 2020 1 session		
One (1) hearing session on expungement request @ \$50.00/session	=\$	50.00
Hearing: April 20, 2021 1 session		
Total Hearing Session Fees	=\$	50.00

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

Robert M. Stein

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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 M Stein

Robert M Stein
Sole Public Arbitrator

05/03/2021

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.

May 03, 2021

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