

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Darrell R. Pennington

Case Number: 20-03114

vs.

Respondent
Ameriprise Financial Services, LLC

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 Darrell R. Pennington (“Claimant”): Jonathan M. Sterling, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

For Respondent Ameriprise Financial Services, LLC (“Respondent”): Howard M. Klausmeier, Esq., Ameriprise Financial Services, Inc., Troy, Michigan.

CASE INFORMATION

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

Statement of Answer filed 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 concurred with Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1080152 and 1669562; 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 that an award be issued that recommends expungement of the subject customer dispute information from Claimant's CRD records and denies any and all relief requested against Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 19, 2021, Claimant advised that the customers in Occurrence Numbers 1080152 and 1669562 (each a "Customer" and, collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). On March 9, 2021, Claimant filed a copy of the FedEx proof-of-delivery for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on March 9, 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, concurred with 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 1080152, 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 1669562 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 and Claimant's Exhibits 4-6, 9, and 10.

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 1080152 and 1669562 from registration records maintained by the CRD for Claimant Darrell Ray Pennington (CRD Number 2686580) with the understanding that, pursuant to Notice to

Members 04-16, Claimant Darrell Ray Pennington 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;

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

Occurrence Number 1080152

The underlying dispute was primarily related to an annuity product, which the evidence and testimony conclusively establishes Claimant did not recommend, sell, or service. The Customer was not Claimant’s client at the time. She was the client of another advisor, who later left the firm. That other advisor was responsible for the trading practices that were referenced in the Customer’s claim.

Occurrence Number 1669562

The evidence and testimony establish that the Customer first made a transfer request to the firm, rather than to Claimant. The firm refused the transfer request, because it was made without supporting documentation and outside the Automated Customer Account Transfer Service (“ACATS”). The Customer then contacted Claimant’s sales assistant but was unable to articulate the nature of her request. Eventually, the Customer asked to liquidate the securities held in her account. Claimant liquidated the securities on the same day the request was made. The balance of the Customer’s account was later transferred through ACATS. The Customer requested damages for the delay in transferring her account, but the firm denied the request in full. No sales practice violation occurred.

2. Claimant’s claim for \$1.00 in compensatory damages is denied.
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

**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: January 11, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 9, 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

Allan R. Lazor

-

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

Allan R. Lazor

Allan R. Lazor
Sole Public Arbitrator

03/20/2021

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.

March 22, 2021

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