

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jay Alan Cunningham

Case Number: 20-03118

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Chicago, Illinois

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 Jay Alan Cunningham (“Claimant”): Harris Freedman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Wells Fargo Clearing Services, LLC (“Respondent”): Paul Yarns, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

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: September 21, 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 any wrongdoing and asserted various affirmative defenses but took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1670841, 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 Claimant's request for monetary damages be denied, all costs be assessed in accordance with FINRA rules, and any other relief that the Arbitrator deems appropriate.

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 March 9, 2021, Claimant advised that one of the customers in Occurrence Number 1670841 ("Customer") was served with the Statement of Claim and notice of the date and time of the first scheduled expungement hearing ("Notice"). Claimant also filed a Death Record and copy of an obituary for the second customer in Occurrence Number 1670841. On March 15, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

On July 28, 2021, Claimant advised that a second notice was served on the Customer, notifying the Customer that the expungement hearing had been rescheduled for September 7, 2021 ("Second Notice"). On August 2, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Second Notice. Claimant also filed a copy of the FedEx tracking information available online for the Second Notice.

The Arbitrator conducted a recorded, telephonic hearing on September 7, 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 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 also reviewed the settlement documentation related to Occurrence Number 1670841, 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 contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; Claimant's Exhibits 1 through 4; underlying written complaint; underlying Statement of Claim; and Claimant's BrokerCheck® Report.

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 1670841 from registration records maintained by the CRD for Claimant Jay Alan Cunningham (CRD Number 1070738) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jay Alan Cunningham 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:

Based not only upon the credible testimony of the Claimant but also on the letter he sent to the customers, describing the transaction before it was effected, the customers' allegation that they didn't know the annuity liquidation was occurring cannot be true. Further, Claimant acknowledged at the hearing, as he had acknowledged to the customers immediately upon discovering his error, that he had read the wrong line of a computer display which he believed demonstrated that the sale would not result in a taxable gain. The tax loss was the result of an honest error, but the customers were benefited by the settlement, which was for the amount of the tax incurred. Now, neither the customers nor their heirs will ever be held responsible for that tax.

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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

July 2, 2021, postponement requested by Respondent = \$ 50.00

Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fees to Respondent.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

July 2, 2021, cancellation requested by Respondent = \$ 600.00

Total Last-Minute Cancellation Fees = \$ 600.00

The Arbitrator has assessed the total last-minute cancellation fees to Respondent.

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 14, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00

Hearing: September 7, 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

James J. Stamos

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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

James J. Stamos

James J. Stamos
Sole Public Arbitrator

09/15/2021

Signature Date

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September 15, 2021

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