

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Marianne Oshee Smith

Case Number: 20-03121

vs.

Respondents
Edward Jones
Investors Capital Corp.

Hearing Site: Hartford, Connecticut

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. Members

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Marianne Oshee Smith: Brian Luther, Esq., FA Expungement, LLC., Denver, Colorado.

For Respondent Edward Jones: Jonathan W. Hackbarth, Esq., Quarles & Brady LLP, Milwaukee, Wisconsin.

Respondent Investors Capital Corp. did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: September 10, 2020.

Marianne Oshee Smith signed the Submission Agreement: September 10, 2020.

Statement of Answer filed by Respondent Edward Jones on or about: November 3, 2020.

Edward Jones signed the Submission Agreement: September 24, 2020.

Investors Capital Corp. did not file a Statement of Answer or sign the Submission Agreement.

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 Edward Jones took no position on Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1368833 and 1505901; and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent Edward Jones requested that Claimant's claim 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.

Respondent Investors Capital Corp. did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

On April 12, 2021, Claimant advised that the customer in Occurrence Numbers 1368833 and 1505901 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on May 20, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

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

Respondent Investors Capital Corp. did not participate in the expungement hearing.

The customer also 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 occurrences in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1368833 was not settled and, therefore, there was no settlement document to review.

The Arbitrator reviewed the settlement documentation related to Occurrence Number 1505901, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and the documents submitted by Claimant regarding the Florida property purchase.

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 1368833 and 1505901 from registration records maintained by the CRD for Claimant Marianne Oshee Smith (CRD Number 1587765) with the understanding that, pursuant to Notice to Members 04-16, Claimant Marianne Oshee Smith 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's claims, allegations and information against Claimant are clearly erroneous under FINRA Rule 2080(b)(1)(A) and false under FINRA Rule 2080(b)(1)(C). Claimant could not have persuaded the customer to transfer funds from her Edward Jones account to invest in Florida real estate because the customer did not use funds in her Edward Jones account to purchase the real estate. The customer took funds out of an account over which Claimant had no control. The Arbitrator found the claim that Claimant persuaded the customer to invest in Florida real estate through Claimant's husband and promised that she could have the funds returned to the customer in six months is incredible for two reasons. First, the customer contacted Claimant's husband independently and the benefit that Claimant's husband, and therefore Claimant indirectly, received was a *de minimus* charge for having his company transfer title to the properties. Secondly, Claimant's husband had no interest in the purchased property, nor was he the real estate broker that facilitated the transaction.

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 person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents are each assessed the following:

Member Surcharge = \$ 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 with the Arbitrator @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: March 1, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 20, 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

Steven R. Rolnick

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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

Steven R. Rolnick

Steven R. Rolnick
Sole Public Arbitrator

06/10/2021

Signature Date

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June 10, 2021

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