Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant Thomas Conway	Case Number: 20-03124
vs.	
Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated	Hearing Site: Boca Raton, Florida

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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 Thomas Conway: Harris Freedman, Esq. and Zachary Morse, Esq., Of Counsel, HLBS Law, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Kathryn D. Perreault, Esq., Of Counsel, Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Statement of Answer filed by Respondent on or about: November 2, 2020.
Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: November 2, 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1476926;

compensatory damages in the amount of $1.00 from Respondent; and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for $1.00 in compensatory damages.

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 or about April 13, 2021, Claimant advised that the customer in Occurrence Number 1476926 ("Customer") was served with a copy of the Statement of Claim, notice of the date and time of the expungement hearing and of the Customer's right to participate therein. On or about April 19, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with proof of service via FedEx upon the Customer, advising that the Customer was served with a copy of the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on June 10, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing. On or about June 7, 2021, Respondent filed with FINRA Dispute Resolution Services a notice advising it would not be participating in the expungement hearing and that Respondent reiterated its position as stated in the Statement of Answer, that Respondent took no position on Claimant's request for expungement.

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 occurrence in the CRD.

On or about June 4, 2021, Respondent filed with FINRA Dispute Resolution Services a notice representing that it has performed a good-faith search and was unable to locate the Settlement Agreement ("Settlement Agreement") in connection with Occurrence Number 1476926. During the hearing, Claimant addressed the terms of the Settlement Agreement in his testimony, which the Arbitrator deemed to be sufficient. 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 pleadings; Claimant's testimony; and Claimant's evidence at the expungement hearing.

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 1476926 from registration records maintained by the CRD for Claimant Thomas Conway (CRD Number 4193950) with the understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Conway 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:

   > At the beginning of the expungement hearing, the Arbitrator noted that the Respondent had indicated in writing it would not be participating during the expungement hearing. Respondent cooperated with the discovery requests. Respondent provided a letter detailing the efforts made by it to locate the Settlement Agreement and its inability to do so. Respondent noted that Respondent had settled as a business decision and that Claimant had not participated, contributed or was in any way part of the settlement negotiations. The Arbitrator also noted that the Customer was served with a copy of the Statement of Claim and notice of the date and time of the expungement hearing and had chosen not to respond to the invitation to participate in the expungement hearing.
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   > Claimant has been employed as an investment advisor for the past twenty-one (21) years all with Respondent. During his twenty-one (21) years in the investment industry, Claimant's CRD Number 4193950 and BrokerCheck® Report contain only one complaint, Occurrence Number 1476926 which is the subject of this expungement request.
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   > Sometime around 2002, the Customer was referred to Claimant through an acquaintance. The Customer was a thirty-one (31) year old employed as a Special Agent with the Internal Revenue Service ("IRS") and as such, an expert when it came to accounting and finance, which he expressed repeatedly. The Customer explained to Claimant he intended to purchase his mother's home and wanted to take advantage of the equity in the home by employing a seldom used and little-known strategy, called a Gift of Equity Strategy ("Gift of Equity"). Gift of Equity is a mortgage financing strategy that allows the seller to gift a portion of the equity in the home to someone else. This strategy would allow the Customer to purchase the home without being required to make a cash down payment. The Customer's mother gifted the Customer with an equity. The Customer used this amount as his down payment. Claimant and the Customer then

discussed several options of how to finance the balance of the purchase price. Each option was explained in detail with its risks and benefits. The Customer chose the PrimeFirst Six (6)-Month Adjustable Rate London Interbank Offered Rate ("LIBOR") mortgage because he determined that the benefits of an interest-only mortgage payment, competitive interest rates, improved cash flow and the ability to increase his potential tax deductibility outweighed the slight risks of any future rate adjustments. In August of 2004, the Customer reached out to Claimant explaining he wanted to make some renovations to the property. Several options were discussed, among them refinancing the mortgage loan versus taking out a home equity line of credit. The Customer chose to take out a home equity line of credit to save closing costs and because he could draw down the equity line of credit as he needed to. The Customer never drew down the line of credit.

In 2005, the Customer contacted Claimant to let him know he was refinancing his mortgage with another entity, but first wanted to know what Respondent had to offer. Claimant suggested the Customer increase his home equity line of credit instead of refinancing. This option would save the Customer closing costs and provide him with the extra money he needed. The Customer determined that increasing his line of credit was indeed a better option.

In October of 2005, the Customer deposited an amount into a Respondent Cash Management Account ("CMA"). The Customer wanted to start investing in the market and discussed his options with Claimant. Claimant discussed asset allocation, industry sector diversification and professional money management that would provide the Customer with a diversified portfolio. The Customer reiterated on several occasions, that he was young and wanted a portfolio that provided him with capital appreciation first and income second. The Customer added, he was looking for long-term growth. Towards the end of 2005, the Customer again inquired about refinancing. Again, Claimant reviewed all the options with the Customer, who reiterated he understood the financial implications of each loan. The Customer decided to go with a five (5)-year interest only fixed to adjustable-rate mortgage loan. Shortly thereafter, the Customer again contacted Claimant because he needed more funds to pay some costs incurred in the home's renovation. All options were reviewed again, the Customer decided to establish a Loan Management Account ("LMA") line of credit. This option allowed the Customer the ability to invest his money and earn a return, while still being able to borrow money.

In March of 2006, the Customer decided he now wanted to invest in the market. As in prior conversations regarding this subject, Claimant presented the Customer an extensive portfolio proposal, discussed the risk-return tradeoff, identified and described the portfolio managers in Respondent's "Consult program" and outlined historical performance. The Customer completed the Consults Account Opening Questionnaire ("Questionnaire"), which confirmed that the Customer wanted a portfolio geared towards capital appreciation first and income second. The Questionnaire confirmed the Customer's risk profile was higher than average. After completion of the Questionnaire, the Customer's funds were invested consistently with the Customer's desire for growth and income.

In March of 2009, the Customer received a maintenance call from Respondent advising him that due to the market volatility during the 2008-2009 recession, the funds had depreciated in value, and he needed to either add funds or repay part of the loan. The

Customer then filed a complaint against Respondent alleging misrepresentation, omissions and unsuitable investment recommendations. The Customer requested monetary damages. Following correspondence between the Customer and Respondent, Respondent settled the claim as a business decision for an amount the Respondent considered nominal in light of the potential costs of litigation. Claimant was not aware of, did not participate in and did not contribute to the Settlement Agreement.

All the allegations made by the Customer against Claimant were false and defamatory. Claimant did not make specific investment recommendations to the Customer, as the Customer was enrolled in Respondent's Consults program, where portfolio managers automatically invested his funds consistent with his capital appreciation and income objectives. Claimant did not manage the Customer's account, nor did he choose individual investments purchased by the portfolio managers according to his instructions. The Customer was aware of all risks involved and of all the advantages and disadvantages used to build his portfolio. In addition, Claimant had spent a significant amount of time going through the different loan options and advantages versus disadvantages of refinancing versus a home equity line of credit. The market conditions at the time triggered the Customer's complaint.

All the allegations made by the Customer against Claimant were false and defamatory. Claimant had extensively explained all options to the Customer. Claimant did not manage the Customer's account. The Customer understood the risk that came with a volatile market and since his primary objective was capital appreciation and growth, he fully understood that he was taking some risk to receive greater potential returns.

The Arbitrator found that these allegations on Claimant's CRD and BrokerCheck® Report harms the Claimant's reputation by misinforming the public of his ethics and conduct. The disclosure makes the record inaccurate and conveys the false impression that Claimant acted improperly with respect to the Customer's account. There is no benefit to the investing public that outweighs the harm to Claimant's reputation through the continued disclosure of Occurrence Number 1476926. Claimant has not previously requested expungement of this complaint. For the above reasons, the Arbitrator found that Claimant is entitled to have Occurrence Number 1476926 expunged from his CRD record pursuant to FINRA Rule 2080(b)(1)(C).

After considering the pleadings, testimony and evidence at the expungement hearing, the Arbitrator recommended expungement of Occurrence Number 1476926 because FINRA Rule 2080(b)(1)(C) has been satisfied.

All claims for relief against Respondent were withdrawn.

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

**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

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: February 5, 2021 1 session		
One (1) hearing session on expungement request @ $50.00/session	=$	50.00
Hearing: June 10, 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

Elena G. Rodriguez - 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

Elena G. Rodriguez **06/11/2021**

Elena G. Rodriguez
Sole Public Arbitrator

Signature Date

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June 14, 2021
Date of Service (For FINRA Dispute Resolution Services use only)