

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Mark Sam Kolta

Case Number: 20-03134

vs.

Respondent
National Securities Corporation

Hearing Site: New York, New York

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

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

REPRESENTATION OF PARTIES

For Claimant Mark Sam Kolta: Tosh Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent National Securities Corporation: Emily A. Hayes, Esq., National Securities Corporation, New York, New York.

CASE INFORMATION

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

Mark Sam Kolta signed the Submission Agreement: September 10, 2020.

Statement of Answer filed by Respondent on or about: November 2, 2020.

National Securities Corporation 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.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 2001730

and 2031871; and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that the Arbitrator direct Claimant to pay all forum fees and costs, including any member surcharges, incurred in this proceeding.

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 March 3, 2021, Claimant advised that the customers in Occurrence Numbers 2001730 and 2031871 ("Customers") were 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 August 26, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and did not oppose the request for expungement.

The Customers also 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 2001730, 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 2031871 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, the Customers' account opening documents, the REIT Subscription Agreement; the National Securities Alternative Investment Disclosure Form; the Statement of Answer in the FINRA arbitration filed by the Customer in Occurrence Number 2031871, and the Award in the FINRA arbitration filed by the Customer in Occurrence Number 2031871.

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 2001730 from registration records maintained by the CRD for Claimant Mark Sam Kolta (CRD Number 5324620) with the understanding that, pursuant to Notice to Members 04-16, Claimant Mark Sam Kolta 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 alleged misrepresentation, negligence, breach of fiduciary duty and breach of contract with respect to his investment in a REIT, which he purchased in 2014 and sold in 2018. The documents presented and the credible testimony of Claimant indicate that the Customer had been a client of Claimant since approximately 2010 and had moved his accounts at least three times as Claimant transitioned to new firms. At each firm, the Customer would have had to complete account opening documents and, specifically at Respondent National Securities Corporation, the Customer confirmed his substantial income and net worth, his primary objective as speculation, and his risk tolerance as aggressive. The Customer would also have been required to complete documents specifically related to the REIT at issue and to acknowledge his awareness of the risks associated with such alternative investments. Prior to his investment in the REIT at issue, the Customer had invested in two other REIT’s, including one with same company as the REIT complained of, and had significant returns on those investments. The loss in value of the Customer’s investment was apparently due, at least in part, to the change in FINRA’s rule regarding how a REIT must report estimated value, but there is no evidence that the loss in value could be attributed to any misrepresentation or negligence on the part of Claimant. The Customer did not file a complaint in 2016 when the share price reported was decreased by approximately 20% and kept his accounts with Claimant when Claimant went to a new firm in 2017. In 2018, after selling his investment in response to a third-party offer, the Customer initiated a FINRA arbitration against Respondent. Claimant was not named as a party, was not a party to the eventual settlement, and did not contribute to the settlement. For the foregoing reasons, the Arbitrator concluded that the allegations were clearly erroneous and false.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 2031871 from registration records maintained by the CRD for Claimant Mark Sam Kolta (CRD Number 5324620) with the understanding that, pursuant to Notice to Members 04-16, Claimant Mark Sam Kolta 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 alleged unsuitability, breach of contract, unauthorized trading, and negligence with respect to her inherited IRA account. The documents and credible testimony of the Claimant indicate that the Customer’s account was non-discretionary and that she was aware of the nature of her investments and participated in determining the allocations of her investments. The Customer did not make any complaints about her investments during the time in 2016 and 2017 when Claimant was her financial advisor. In 2019, more than a year after moving her accounts from Respondent National Securities Corporation, the Customer initiated a FINRA arbitration against Claimant. In a decision on the papers, the Arbitrator dismissed the Customer’s claims in their entirety. For the foregoing reasons, the Arbitrator concluded that the allegations were clearly erroneous and false.

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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent National Securities Corporation 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: January 11, 2021	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: August 26, 2021	1 session		
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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

Sandra J. Mullings

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Sandra J. Mullings

Sandra J. Mullings
Sole Public Arbitrator

09/08/2021

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.

September 08, 2021

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