

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James Cosmo Ciocia

Case Number: 20-03140

vs.

Respondent
Prime Capital Services, Inc.

Hearing Site: Tampa, Florida

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 James Cosmo Ciocia (“Claimant”): Tosh D. Grebenik, Esq., Judex Law, LLC, Denver, Colorado.

For Respondent Prime Capital Services, Inc., National Securities Corporation appeared as successor in interest (“Respondent”): Emily A. Hayes, Esq., National Holdings Corporation, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.
Claimant signed the Submission Agreement: September 10, 2020.

Statement of Answer filed on or about: November 2, 2020.
Respondent 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 Number 1390045

and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that all forum fees and costs, including any member surcharges, be assessed against Claimant.

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 3, 2021, Claimant advised that the customer in Occurrence Number 1390045 (“Customer”) was served with the Statement of Claim and notice of the date of the expungement hearing (“Notice”). Claimant also filed a copy of the USPS Certified Mail tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on July 13, 2021 (“first expungement hearing”), so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the first expungement hearing. The Customer did not participate in the first expungement hearing. The Arbitrator noted that the Notice provided the incorrect time for the first expungement hearing and ordered that a second expungement hearing be held.

On August 1, 2021, Claimant advised that the Customer was deceased and that the Estate of the Customer was served with notice of the date and time of the second expungement hearing (“Second Notice”). Claimant also filed a copy of the USPS Certified Mail tracking information available online for the Second Notice.

The Arbitrator conducted a second recorded, telephonic hearing on August 2, 2021 (“second expungement hearing”), so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the second expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

The Estate of the Customer did not participate in the second expungement hearing. The Arbitrator found that the Estate of the Customer had notice of the expungement request and second expungement 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 was unable to review the settlement documentation related to Occurrence Number 1390045. Claimant filed correspondence stating that Claimant and Respondent were both unable to locate a copy of the settlement documentation. Based on the testimony and representations of Claimant and information contained in the BrokerCheck® Report, the Arbitrator considered the amount of payments made to any party and noted that Claimant did

contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony 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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1390045 from registration records maintained by the CRD for Claimant James Cosmo Ciocia (CRD Number 1619245) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Cosmo Ciocia 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:

The various terms of Hartford variable annuity, including the income rider and the sub-account fees, were fully reviewed and disclosed to the Customer numerous times both verbally and in writing. First, during the in-person meeting with Claimant and the Hartford representative held at Claimant's office, the details of the Hartford annuity were reviewed orally with the Customer, and the Customer left the meeting with a packet that detailed all the terms of the Hartford variable annuity. Second, prior to execution of the Hartford variable annuity documents, Claimant again verbally reviewed the terms of the annuity with the Customer. Third, when Claimant delivered the contract to the Customer, the Customer was left with a packet detailing the terms of the annuity and a 10-day "look back" period to review and terminate the variable annuity policy without penalty if the policy was not right for him. Furthermore, Respondent thoroughly reviewed the Customer's complaint and found that Claimant "made adequate disclosures" to the Customer. The claim was settled by Respondent solely to avoid the cost and uncertainty of litigation. The Customer had the terms of the income rider in writing for his review as well as a detailed review made orally by the Hartford representative and by Claimant on two separate occasions. The Customer was a sophisticated investor who chose the annuity he felt was best for himself and his family. He was fully aware of all the material terms of the variable annuity policy, but he got cold feet due to the downturn in the market and did not want to pay the penalty for cancelling the variable annuity contract after the 10 day "look back" period was over. As such, it is clear that the Customer's claims are 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
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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
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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: December 31, 2020	1 session	

Three (3) hearing session on expungement request @ \$50.00/session	=\$	150.00
Hearings: July 13, 2021	2 sessions	
August 2, 2021	1 session	

Total Hearing Session Fees	=\$	200.00
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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

Karimu F. Hill-Harvey

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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

Karimu F. Hill-Harvey

Karimu F. Hill-Harvey
Sole Public Arbitrator

08/09/2021

Signature Date

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August 09, 2021

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