

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Matthew Fleissner

Case Number: 20-03154

vs.

Respondent  
National Securities Corporation

Hearing Site: New York, New York

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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

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

**REPRESENTATION OF PARTIES**

For Claimant Matthew Fleissner: Tosh Grebenik, JD, 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.

Matthew Fleissner signed the Submission Agreement: September 10, 2020.

Statement of Answer filed by Respondent on or about: November 13, 2020.

National Securities Corporation signed the Submission Agreement: November 13, 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 2039714

and 1996542; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested that the Arbitrator assess all forum fees and costs to the Claimant.

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 2039714 and 1996542 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 September 14, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

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 2039714, 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 contributed to the settlement amount. The Arbitrator recommends expungement of this occurrence because Claimant's contribution was required by the firm.

The Arbitrator noted that the dispute related to Occurrence Number 1996542 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 BrokerCheck® Report, the pleadings, Claimant's testimony, and the exhibits.

### **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 2039714 from registration records maintained by the CRD for Claimant Matthew Fleissner (CRD Number 5849065) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Matthew Fleissner 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 became a client of Claimant in 2014. He was interested in generating income with preservation of capital with a moderate risk tolerance. Claimant introduced him to several products including CDs, REITs, mutual funds, BDCs and syndicated secondary offerings. The customer reviewed and executed all required documentation and disclosures including those relating to these alternate investments. Except for one investment, his account was quite profitable. The firm settled the matter for \$30,000.00 to avoid the cost and expense of defense. Claimant was required to pay \$21,000.00 representing his payout. The settlement agreement was not conditioned on consent to expungement and Claimant was not involved in the settlement. This Occurrence should be expunged on the grounds that it is clearly erroneous or false. The investments made by the customer were suitable for him based on his investment objectives and profile.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1996542 from registration records maintained by the CRD for Claimant Matthew Fleissner (CRD Number 1996542) with the understanding that, pursuant to Notice to Members 04-16, Claimant Matthew Fleissner 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 became a client in 2014. A high net worth, sophisticated investor, his investment objectives were capital creation with a moderately aggressive risk tolerance. He was also an accredited investor able to purchase a variety of alternate investments. The customer approved all transactions in his non-discretionary account and received

trade confirmations in due course. He also received and executed all private placement memoranda and disclosures. From 2016 through 2018, his account was inactive. In 2018 he filed a FINRA arbitration alleging, inter alia, unsuitability. His claim for \$300,000.00 was settled by the firm with no contribution by Claimant for the sum of \$90,000.00 in order to avoid the cost and expense of defense. Claimant took no part in the settlement, which was not conditioned on consent to expungement. This Occurrence should be expunged on the grounds it is clearly erroneous or false. The investments were suitable for the customer based on his investment objectives and risk tolerance.

### **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 that employed the associated person 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
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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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: January 20, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: September 14, 2021	1 session	

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Total Hearing Session Fees	= \$	100.00
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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**

Robert E. Anderson

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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**

***Robert E. Anderson***

Robert E. Anderson  
Sole Public Arbitrator

**09/28/2021**

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 28, 2021

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