

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jimmy William Kuhn

Case Number: 20-03157

vs.

Respondent
American Portfolios Financial Services, Inc.

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 Jimmy William Kuhn: Robert Moses, Esq., RJM Counsel, PLLC, New York, New York.

For Respondent American Portfolios Financial Services, Inc.: Craig Vollono, EVP, American Portfolios Financial Services, Inc., Holbrook, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.
Jimmy William Kuhn signed the Submission Agreement: September 11, 2020.

American Portfolios Financial Services, Inc. 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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1859298 (“Customer A”), 1970280 (“Customers B”), and 2031510 (“Customers C”); and compensatory damages in the amount of \$1.00 from Respondent.

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 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 February 18, 2021, Claimant advised that Customer A, Customers B, and Customers C were served with the Statement of Claim and notice of the date and time of the expungement hearing. On March 9, 2021, Claimant advised that Customer A was again served with notice.

The Arbitrator conducted a recorded, telephonic hearing on April 20, 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 Arbitrator found that the Respondent had notice of the expungement request and 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 Numbers 1859298, 1970280, and 2031510, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts related to Occurrence Numbers 1970280 and 2031510. Claimant paid the insurance deductible associated with the settlement of Occurrence Number 1859298. Despite this, the Arbitrator has determined that expungement of this occurrence is appropriate.

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

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1859298, 1970280, and 2031510 from registration records maintained by the CRD for Claimant Jimmy William Kuhn (CRD Number 3260491) with the understanding that, pursuant

to Notice to Members 04-16, Claimant Jimmy William Kuhn 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:

This case is a request for expungement of three occurrence numbers from Claimant’s CRD Record and BrokerCheck® Report, all three of which involve settlements of customer claims filed with FINRA. In each of the three customer claims, the settlements were made between the respective customers and Respondent. Respondent was and continues to be the employer of Claimant. At the beginning of this case, Respondent indicated they did not oppose the expungement request, and that they would not participate in the expungement hearing.

For each of the three occurrences, Claimant notified the respective customers of the expungement hearing and informed them that they could participate. However, none of the customers indicated an interest in participating, and none ultimately appeared at the hearing.

The Arbitrator recommends expungement of all three occurrence numbers, each under Rule 2080(b)(1)(C), that “the claim, allegation, or information is false.” Claimant was the only witness, and the Arbitrator found his testimony to be credible. In addition, all occurrences occurred while Claimant worked for Respondent, and despite these complaints and settlements, Respondent continues to employ him and has never disciplined him. In all three occurrences, Respondent looked into the allegations in the customer complaints and denied these allegations. In all three occurrences, Respondent decided to settle to avoid litigation costs, and without indicating any wrongdoing on the part of Claimant or Respondent.

Furthermore, these three occurrences constitute a small number of complaints in relation to the numerous customers that Claimant has.

The following are specific to each disclosure:

Occurrence Number 1859298:

The Arbitrator recommends expungement of Occurrence Number 1859298. Claimant testified that this account was a non-discretionary, fee-based account. When Customer A brought his account to Respondent, Customer A filled out a new account form and risk profile, which indicated an interest in growth. Customer A was aggressive on growth and willing to accept higher volatility in exchange for a potentially better return. Claimant kept in close contact with Customer A, discussed every trade with him, and verbally informed him of the risks of his trading. Claimant also socialized with Customer A. According to Claimant,

Customer A wanted to invest in energy and commodities and was perhaps overweighted in those. At some point, Customer A had unrealized losses and left Respondent. Sometime later, Customer A filed a complaint with FINRA alleging breach of fiduciary duty, negligent supervision, negligence, unsuitable recommendations, breach of contract, negligent misrepresentation, and unauthorized trading. Customer A's complaint requested monetary damages for his losses.

Claimant denied wrongdoing and Respondent agreed that there was no wrongdoing on Claimant's part. Respondent settled with Customer A for much less than what Customer A sought. Claimant testified that he did contribute a small amount to the insurance deductible because of this claim. However, Claimant did not contribute to the settlement, and Respondent did not request that Claimant contribute to the settlement.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1859298 because Rule 2080(b)(1)(C) has been satisfied.

Occurrence Number 1970280 (Case Number 18-00076):

The Arbitrator recommends expungement of Occurrence Number 1970280. Claimant testified that this account was a non-discretionary, fee-based account. When Customers B brought this account to Respondent, Customers B filled out a new account form and risk profile, which indicated an interest in growth with a risk tolerance of "fairly aggressive / moderately high." Claimant kept in close contact with Customers B and discussed every trade and verbally informed them of the risks of trading. Some of the riskier trades were unsolicited by Claimant. Customers B were aware of all their trading, logging onto their account regularly. At some point, Customers B had unrealized losses and left Respondent.

Sometime later, Customers B filed a complaint with FINRA alleging breach of fiduciary duties, neglectful portfolio supervision, and unsuitable financial recommendations. The damages they sought were unspecified. Claimant denied any wrongdoing on his part. Respondent settled the case with Customers B. Claimant did not contribute to the settlement, and Respondent did not request that Claimant contribute to the settlement.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1970280 because Rule 2080(b)(1)(C) has been satisfied.

Occurrence Number 2031510 (Case Number 19-00998):

The Arbitrator recommends expungement of Occurrence Number 2031510. Claimant testified that this account was a non-discretionary, commission-based account. Customers C were wealthy businesspeople who sold a car dealership. When Customers C brought this account to Respondent, they were initially conservative investors, trading mutual funds and real estate investment trusts ("REITS"), but they later wanted more aggressive investments. Customers C purchased technology stocks. Claimant kept in close contact with Customers C, discussing every trade and verbally telling them the risks of trading. At some point, Customers C had unrealized losses and left Respondent.

Sometime later, Customers C filed a complaint with FINRA alleging unsuitability, common law fraud, breach of contract, negligent supervision, and breach of fiduciary duty. Claimant

was not named in the complaint. The damages they sought were unspecified. Respondent denied any wrongdoing. Respondent settled the case with Customers C. Claimant did not contribute to the settlement, and Respondent did not request that Claimant contribute to the settlement.

Therefore, the Arbitrator recommends expungement of Occurrence Number 2031510 because Rule 2080(b)(1)(C) has been satisfied.

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 that employed the associated person at the time of the events 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: January 6, 2021 1 session

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

Ellyn S. Roth

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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

Ellyn S. Roth

Ellyn S. Roth
Sole Public Arbitrator

04/23/2021

Signature Date

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April 23, 2021

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