

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

---

In the Matter of the Arbitration Between:

Claimant  
Rachel Cabiltes Leventhal

Case Number: 20-03159

vs.

Respondent  
Hennion & Walsh, Inc.

Hearing Site: Jersey City, New Jersey

---

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 Rachel Cabiltes Leventhal: Jennifer Woods-Burke, Esq., Hennion & Walsh, Inc., Parsippany, New Jersey.

For Respondent Hennion & Walsh, Inc.: Mitra E. Niknam, Esq., Hennion & Walsh, Inc., Parsippany, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: September 11, 2020.

Rachel Cabiltes Leventhal signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: September 14, 2020.

Hennion & Walsh, Inc. signed the Submission Agreement: September 14, 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 stated that it had no objections to Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1997462,

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

In the Statement of Answer, Respondent did not delineate any specific relief request.

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 January 26, 2021, Claimant advised that the customer in Occurrence Number 1997462 ("Customer") was 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 March 3, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The Customer 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.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1997462, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the testimony of Claimant; the pleadings in the underlying matter involving the Customer; the Customer's New Account Application with Respondent brokerage firm; trade confirmations; account records; and notes from Claimant regarding interactions with the Customer concerning her brokerage account.

### **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 1997462 from registration records maintained by the CRD for Claimant Rachel Cabillet Leventhal (CRD Number 4426047) with the understanding that, pursuant to Notice to

Members 04-16, Claimant 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:

Claimant, a Broker Representative, seeks expungement of information in her BrokerCheck® Report. At the expungement hearing, it was established that Claimant had served the customer with a Notice of the expungement hearing as well as a copy of her Statement of Claim. Claimant also provided a copy of the settlement agreement between the Customer and the Respondent herein, a Broker-dealer. The Arbitrator reviewed the settlement agreement between the Customer and Respondent and confirmed at the hearing that any sum paid to the Customer was done solely by Respondent herein for purposes of settlement, without admission of any liability. Claimant confirmed in her testimony that she made no contribution toward the settlement. Claimant also testified that this customer dispute information was her first and only such incident in the eighteen (18) years in which she had been a Broker Representative for Respondent herein. Claimant also confirmed that this was her first request for expungement for this incident.

Claimant sought to expunge customer dispute information regarding allegations of an unsuitable purchase and under performance of certain Puerto Rico bonds. It was further alleged that the Claimant and Respondent, under whose supervision she worked, should never have advised the Customer to make such a purchase and should have advised her to sell those holdings once the market began to take a downturn as to these bonds. The documents presented also alleged that the Customer’s representative took the position that the Customer suffered an unrealized loss in excess of \$180,000.00 as to these specific bonds.

Claimant also testified that the Customer’s account was a non-discretionary account and that the Customer had the final decision on the sale or purchase of any bonds. Claimant further testified that the Customer was an experienced investor and had held her account with Claimant for over fifteen (15) years. The Customer was described as a person who would buy and hold her investments. The New Application which the Customer signed indicated that she had at least ten (10) years of investing experience prior to opening an account with Respondent and that she was investing for income and wanted moderate risk investments. The Customer had a portfolio consisting of mostly triple tax-exempt bonds, invested in several municipalities and New York City municipal bonds as well as in the government of Puerto Rico bonds and its subsidiaries.

At the time of her purchases of the Puerto Rico bonds in question, Claimant advised the Customer that they were of investment grade, and the proofs at the hearing demonstrated

that such advice was correct. Over the years, Claimant continually maintained contact with the Customer and, at the hearing, introduced an extensive quantity of notes of her interactions with the Customer regarding her investments. Claimant testified that over the years, she always provided advice as to the market fluctuations and particularly when certain of the Customer's municipal bonds were experiencing a precipitous fall, which included the default in 2015. However, Claimant advised that although the Customer listened to her advice, the Customer would make the final determination as to whether to sell or retain the bonds. Despite market conditions, the Customer chose to hold onto the Puerto Rico bonds.

It was clear from the testimony and documents submitted that the Customer, an experienced investor, was seeking to recover her losses which resulted, not from any advice that Claimant may have provided, but as the result of poor economic conditions and the decisions made by government officials in Puerto Rico, over which the Claimant had no control.

The testimony at the expungement hearing demonstrated that, at the time of the Customer's purchases of the Puerto Rico municipal bonds, these bonds were of investment grade. The proofs presented also demonstrated that the Customer's accounts were non-discretionary ones and that neither Respondent nor Claimant had any discretionary authority over these accounts. In fact, the Customer received periodic account statements and trade confirmations from Respondent outlining the activity and the gain or loss in the accounts. Despite any adverse information as to these Puerto Rico bonds, the Customer willingly determined not to sell them and to retain them in her portfolio. It should be noted also that the municipal bonds in question represented a small fraction of her total portfolio.

The proofs at the expungement hearing also demonstrated that the Customer was continuously advised regarding her investments, but chose to make her own decision as to whether to sell or retain a specific bond since she wanted to retain the benefit of the yield on these municipal bonds. According to the BrokerCheck® Report the original allegations against Claimant alleged unsuitable and under-performing products in the Customer's portfolio.

However, the evidence and testimony presented at the expungement hearing did not support such an allegation. Claimant offered testimony as well as emails and contemporaneously made notes of her conversations with the Customer which clearly support the fact that it was the Customer alone who determined not to sell the bonds in question. At no time prior to the filing of the Statement of the Claim did the Customer complain to Claimant about the municipal bonds, which she unmistakably purchased as investment grade bonds.

The testimony and documentation presented at the hearing, unmistakably demonstrate that the Customer's claim made against the Claimant herein was false pursuant to FINRA 2080(b)(1)(C). There was nothing in the record to support any conclusion other than that this Customer was steadfast in her desire to retain the municipal bonds regardless of Claimant's advice.

Accordingly, I find that based upon the above, Claimant is entitled to an Award which recommends expungement of the Customer's dispute information in her BrokerCheck® Report. Any reference in the BrokerCheck® Report must be deleted in its entirety.

2. 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) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing: March 3, 2021 1 session

---

Total Hearing Session Fee = \$ 50.00

The Arbitrator has assessed the entire hearing session fee to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATOR**

Paul Allan Massaro

-

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**

***Paul Allan Massaro***

Paul Allan Massaro  
Sole Public Arbitrator

**03/08/2021**

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.

March 08, 2021

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