

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Anna Vucurevich Jenkins

Case Number: 20-03171

vs.

Respondent

Banc of America Investment Services Inc.

Hearing Site: San Francisco, California

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.

REPRESENTATION OF PARTIES

For Claimant Anna Vucurevich Jenkins (“Claimant”): Robert L. Gonser, Esq., Gonser Law PC, Lafayette, California.

For Respondent Banc of America Investment Services Inc. (“Respondent”): Patrick J. Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: September 14, 2020.

Claimant signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: November 17, 2020.

Respondent signed the Submission Agreement: November 17, 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:

1. Expungement of Occurrence Numbers 1469923 and 1469924 from Claimant’s CRD records pursuant to FINRA Rule 2080; and

2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested that the compensatory damages in the amount of \$1.00 be denied.

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 10, 2021, Claimant advised that the customers in Occurrence Number 1469923 (“Mr. M”) and Occurrence Number 1469924 (“Mr. B”) were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. M and Mr. B are collectively referred to as “Customers”.

On January 20, 2021, Respondent filed a notice stating that Occurrence Numbers 1469923 and 1469924 were related to the illiquidity of each Customer’s auction rate securities (“ARS”) and because both ARS “complaints were resolved as part of a global settlement (“global settlement”) between Merrill Lynch and securities regulators, there are no individual settlement agreements related to either customer complaint”. By Order dated February 8, 2021, the Chair stated that “counsel for both parties confirmed there were no SEC or individual settlement agreements involving the two customer complaints at issue in this matter”. In a letter dated February 18, 2021, Respondent further noted that the Customers “did not sign an agreement regarding the resolution of their complaints, and there are no individual settlement agreements related to either customer complaint.”

The Arbitrator conducted a recorded, telephonic hearing on April 13, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

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

The Customers 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 noted that there were no individual settlement agreements related to Occurrence Numbers 1469923 and 1469924, and the parties were not able to produce the global settlement agreement and, therefore, there were no settlement documents to review. The settlements noted on the BrokerCheck® Report for Claimant were part of a global settlement reached by Merrill Lynch and securities regulators. The Arbitrator did not review the global settlement agreement, but based on Claimant’s testimony, the Arbitrator noted that Claimant was not involved in the global settlement agreement and did not contribute to the settlement amount,

which was a repurchase of the ARS at par value. The Arbitrator also noted that the settlement was not conditioned on the Customers not opposing the request for expungement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report; Claimant's testimony; disclosures in the Statement of Claim and Statement of Answer; SEC and Respondent's brief setting forth mandatory reporting of sales practices violations after the settlement which returned out-of-pocket losses to the Customers; and SEC press release regarding the global settlement.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 1469923 and 1469924 from registration records maintained by the CRD for Claimant Anna Vucurevich Jenkins (CRD Number 2837881) with the understanding that, pursuant to Notice to Members 04-16, Claimant Anna Vucurevich Jenkins 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.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Occurrence Number 1469923, in which Mr. M was the customer, should be expunged under Rules 2080(b)(1)(A) and 2080 (b)(1)(C) because the Arbitrator finds that the occurrence was clearly erroneous and false. Claimant testified that she inherited Mr. M as a customer and recommended the ARS investment to him as the seller of the product represented its liquidity and Claimant's independent research found no basis for believing a liquidity issue might arise. Claimant made no misrepresentations to Mr. M.

Occurrence Number 1469924, in which Mr. B was the customer, should be expunged under Rules 2080(b)(1)(A), Rules 2080(b)(1)(B), and 2080 (b)(1)(C) because Claimant was not involved in Mr. B's dispute. Mr. B acquired ARS investments from someone other than Claimant. Claimant testified that she did not recommend this purchase and inherited Mr. B as a customer on referral from another broker in the same office.

Claimant has a long, unblemished record of over 30 years in the industry and that these incidents happened because of unforeseeable drying up of trading in the auction market. Claimant also stated in her testimony that her trading desk required her to agree to the global settlement and that her supervisor was required to report these occurrences, even though Claimant had made no affirmative misrepresentations. Claimant's CRD records and the testimony during the hearing did not provide any evidence that Claimant had made any misrepresentations. Thus, the occurrences are false under the FINRA Rule 2080 criteria.

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$	100.00
Pre-Hearing Conferences: January 4, 2021	1 session	
February 8, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 13, 2021	1 session	

Total Hearing Session Fees	= \$	150.00
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The Arbitrator has assessed \$50.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$100.00 of the hearing session fees to Respondent.

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

ARBITRATOR

William Michael Samsel

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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

William Michael Samsel

William Michael Samsel
Sole Public Arbitrator

04/28/2021

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.

April 29, 2021

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