

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Haskel Nessim

Case Number: 20-03173

vs.

Respondent
Josephthal & Co., 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

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

REPRESENTATION OF PARTIES

For Claimant Michael Haskel Nessim: Ross J. Kartez, Esq. and Brian Passarelle, Esq., Ruskin Moscou Faltischek, P.C., Uniondale, New York.

Respondent Josephthal & Co., Inc. did not appear.

CASE INFORMATION

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

Michael Haskel Nessim signed the Submission Agreement: September 11, 2020.

Josephthal & Co., 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 Number 248970 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.

Respondent did not appear at the evidentiary hearing. Upon review of the file, the Arbitrator determined that Respondent received due notice of the hearing and that arbitration of the matter would proceed without Respondent present, in accordance with the Code.

On March 16, 2021, Claimant advised of his attempts in February 2021 to serve the Statement of Claim and notice of the date and time of the expungement hearing upon the customer in Occurrence Number 248970 (“Customer”). Since Respondent was unable to provide Claimant with the Customer’s address, Claimant’s counsel sent notice to all 18 of the potential addresses he was able to identify for the Customer. Three of the deliveries were confirmed to be delivered by the USPS electronic tracking system.

The Arbitrator conducted a recorded, telephonic hearing on April 5, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Neither the Customer nor Respondent participated in the expungement hearing.

The Arbitrator found that Claimant’s attempts at service of notice of the expungement request and hearing upon the Customer were sufficient to proceed.

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.

Claimant acknowledged paying settlement proceeds to the Customer out of his own pocket in order to preserve the client relationship, but no settlement documents were signed. Therefore, there was no settlement agreement for the Arbitrator to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s testimony and BrokerCheck® Report. Due to the age of the occurrence and Respondent’s status, no other documentation was available.

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 248970 from registration records maintained by the CRD for Claimant Michael Haskel Nessim (CRD 2573543) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Michael Haskel Nessim 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

The Customer, concerned about possible market loss, instructed Claimant to place a stop loss order on his account to be triggered at a certain dollar amount. Claimant did so. Due to market volatility/poor trading execution, the order was executed but the account declined in value. In order to preserve the account relationship and at the direction of his branch manager, Claimant contributed an amount equal to the decline in value into the Customer's account from Claimant's commissions. There was no settlement paperwork. Claimant also testified as to the adverse impact this disclosure has had on his business marketing efforts.

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) pre-hearing session with a single Arbitrator @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: February 3, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing: April 5, 2021 1 session	

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 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

04/06/2021

Signature Date

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April 07, 2021

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