

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Haskel Nessim

Case Number: 20-03175

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.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

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

For Respondent Josephthal & Co., Inc.: Nicola Anne Murphy, Esq., Oppenheimer & Co., Inc., New York, New York.

CASE INFORMATION

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

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

Statement of Answer filed by Respondent on or about: December 8, 2020.

Josephthal & Co., Inc. signed the Submission Agreement: December 8, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: money damages against Respondent in the amount of \$1.00, and expungement of Occurrence Number 159003 pursuant to FINRA Rule 2080, directing the expungement of the subject information from Claimant's Form U4, Form U5, CRD records, BrokerCheck, and any other database that maintains records of customer complaints.

In the Statement of Answer, Respondent opposed any monetary damages demands either explicitly or implicitly stated by Claimant in Claimant's Statement of Claim.

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 2, 2021, Claimant advised that the customer in Occurrence Number 159003 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on June 22, 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 Customer also 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 noted that the dispute related to Occurrence Number 159003 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 testimony.

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 159003 from registration records maintained by the CRD for Claimant Michael Haskel Nessim (CRD Number 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 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 claim, allegation, or information is false.

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

The underlying claim occurred around twenty-one (21) years ago. Claimant left Respondent in August of 1998 and was no longer registered with Respondent after that time. Around February of 2000, Respondent received notice that the Customer, who had previously been a customer of Claimant, thought that several of Claimant’s recommendations were “too speculative,” and as a result, lost a substantial sum of money.

Claimant left Respondent around a year prior to the Customer’s complaint being filed and was not notified or contacted with regard to the complaint. When Claimant investigated the complaint, he learned that the Customer had called Respondent, and asked about his account balance. When the Customer learned the account value had declined, he responded by alleging that some of the securities were “too speculative.”

The Customer never filed a written complaint, did not ask Respondent to cover his losses, and did not pursue arbitration. It is clear the claim, allegation, or information is false.

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
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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 event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

April 21, 2021, postponement requested by Claimant = \$ 50.00

Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fees to Claimant.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

April 21, 2021, cancellation requested by Claimant = \$ 600.00

Total Last-Minute Cancellation Fees = \$ 600.00

The Arbitrator has assessed the total last-minute cancellation fees to Claimant.

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 25, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: June 22, 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

Julian F. Santos

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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

Julian F. Santos

Julian F. Santos
Sole Public Arbitrator

06/28/2021

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.

June 28, 2021

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