

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Erik John Drewes

Case Number: 20-03188

vs.

Respondent
American Capital Partners, LLC

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Erik John Drewes: Michael Ferrence, Esq., Thomas McEvoy, Esq. and Peter Chema, Esq., Sichenzia Ross Ference LLP, New York, New York.

For Respondent American Capital Partners, LLC: John Gardini, CCO, American Capital Partners, LLC, Hauppauge, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.
Erik John Drewes signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: November 6, 2020.
American Capital Partners, LLC did not sign the Submission Agreement.

Amended Statement of Claim filed on or about: July 27, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, 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 contest Claimant's expungement request and denied any allegations of wrongdoing.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of Occurrence Numbers 1736019 and 2070449, and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested the denial of any request for compensatory damages.

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 American Capital Partners, LLC did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On June 21, 2021, Claimant filed an unopposed Motion to Amend the Statement of Claim, in which he sought to add a relief request for expungement of Occurrence Number 2070449. On July 3, 2021, the Arbitrator issued an Order in which he granted Claimant's Motion to Amend the Statement of Claim.

The Arbitrator conducted a recorded hearing by videoconference on October 22, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

At the hearing, Claimant provided proof that on September 16, 2021 and October 1, 2021, the customers in Occurrence Numbers 1736019 ("Customer A") and 2070449 ("Customer B") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Respondent did not appear by counsel. However, Respondent's President testified as a witness and as stated in the Statement of Answer, did not contest the request for expungement.

Customers A and B did not participate in the expungement hearing. The Arbitrator found that Customers A and B 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 1736019 and 2070449, 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.

The Arbitrator also noted that Claimant contributed to the settlement amount for Occurrence Number 1736019 and did not contribute to the settlement in Occurrence Number 2070449.

In Occurrence Number 1736019, Respondent decided to settle to avoid the cost and operational disturbance of a multi-day, out-of-town hearing in Wisconsin. Claimant had no part in the decision but was absolutely and unconditionally required by his then-existing employment contract to bear all operational costs of his office including customer complaint costs and expenses, and to indemnify Respondent against all such costs.

In Occurrence Number 2070449, Claimant was not named in the claim, was not party to the settlement and made no contribution to the settlement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Exhibits 1-25 and the testimony of Claimant and Respondent's President.

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 1736019 and 2070449 from registration records maintained by the CRD for Claimant Erik John Drewes (CRD Number 2187363) 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, 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:

Occurrence Number 1736019 – Customer A sought \$500,000.00 based on general allegations of unsuitability and churning in an account allegedly opened for growth. No specific transactions were identified.

The documents and testimony show that: Customer A was an accredited investor with ten (10) years investment experience, a seven-figure liquid net worth and a six-figure annual

income; the account was opened for the purpose of speculation in the hope of large gain; Customer A repeatedly confirmed these facts, in writing, to Respondent and to other investment firms with which Customer A traded; Customer A traded on margin and in options as well as other securities; Customer A initiated and/or approved all trades, and received confirmations and statements; Customer A had, and constantly used, online access to his account; and, Customer A made no complaints until he closed the account and sued.

Respondent investigated the claim and found no merit to the claim and no fault on Claimant's part. As the hearing was to be in Wisconsin and would have involved the considerable expense and business disruption involved in out-of-town litigation, Respondent, alone, decided to settle. Claimant's then-existing contract with Respondent absolutely required Claimant to bear all costs and expenses of his office, including specifically the costs of any customer claims, and to indemnify Respondent against all such costs.

On this record, Customer A's suitability and churning claims were clearly erroneous and/or false within the meaning of FINRA Rule 2080.

Occurrence Number 2070449 - Customer B claimed that Respondent had failed to conduct due diligence on a real estate investment trust ("REIT") in which Customer B had invested; Customer B sought \$70,157.26. Claimant was not named in the claim. Respondent, alone, decided to settle to avoid the expense and disruption of an out-of-town trial in Pennsylvania. Claimant made no contribution to the settlement.

The testimony and documents show that: Customer B was an accredited investor with a seven-figure liquid net worth and a high six-figure annual income; Customer B wanted growth and speculation; Respondent had conducted due diligence on the REIT including document review and a site visit; the REIT had paid distributions for a time; the REIT is still in operation; and Customer B is believed to still own the investment.

On this record, Customer B's claim is clearly erroneous and/or false within the meaning of FINRA Rule 2080.

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 American Capital Partners, LLC 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 26, 2021 1 session

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

Brian John Gallagher

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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

Brian John Gallagher

Brian John Gallagher
Sole Public Arbitrator

11/18/2021

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.

November 18, 2021

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