

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jason Luke Zahtila

Case Number: 20-03191

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 Jason Luke Zahtila: Thomas P. McEvoy, Esq., and Michael H. Ference, Esq., Sichenzia Ross Ference LLP, New York, New York.

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

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.
Jason Luke Zahtila signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: November 5, 2020.
American Capital Partners, LLC did not 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”).

In the Statement of Answer, Respondent denied any allegations of wrongdoing but did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1486193 and 1310001; and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that Claimant's claim for compensatory damages 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.

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, having answered the claim, is bound by the determination of the Arbitrator on all issues submitted.

On July 12, 2021, Claimant advised that the surviving customer in Occurrence Number 1486193 and the customer in Occurrence Number 1310001 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant further advised that the other customer in Occurrence Number 1486193 is deceased.

The Arbitrator conducted a recorded hearing by videoconference on July 14, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

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

The Customers also 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 also reviewed the settlement documentation related to Occurrence Number 1486193, 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. The Arbitrator also noted that Claimant contributed to the settlement amount. The Arbitrator found expungement is still warranted as Claimant's contribution to the settlement was required by the Respondent. The Respondent had indemnification agreements with all of its registered representatives that required Claimant to pay the agreed settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 1310001 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 BrokerCheck® Report, the account statements, the customers' Trade Confirmations, Claimant's notes regarding the customers' accounts, the deceased customer's obituary, the settlement agreement, the Notice of Hearing with Proof of Service and Delivery on the last known addresses of the customers, Claimant's testimony, and the testimony of the witness presented at the hearing.

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 1486193 from registration records maintained by the CRD for Claimant Jason Luke Zahtila (CRD Number 4009691) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jason Luke Zahtila 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:

Husband and wife customers claimed the investments made in their account were unsuitable. The husband customer was well-known in Oklahoma, where the arbitration would have been held and was politically well-connected. Respondent determined that the cost and uncertainty of having an arbitration would exceed the ultimate settlement amount, especially considering that the husband customer was very well-known and respected in Oklahoma. The President of the Respondent took the time and effort to provide testimony in this expungement hearing because, as he testified, that he felt very strongly about how these events impacted Claimant, that to this day he believes that Claimant did nothing wrong and Claimant remains an employee of Respondent. The customers' basic claim was unsuitability. The customers had a non-discretionary account and, as such, approved, ratified, and authorized every trade in the account. Effectively, the customers approved every trade and therefore the claim of unsuitability against the Claimant is false and expungement should be granted in accordance with FINRA Rule 2080 (a)(1)(C).

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1310001 from registration records maintained by the CRD for Claimant Jason Luke Zahtila (CRD Number 4009691) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Jason Luke Zahtila 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:

The customer filed a complaint alleging that Claimant failed to issue a stop-loss order and was charging commissions that were too high. The complaint requested \$12,000 in damages. Respondent investigated the complaint and denied it. NASD also investigated and issued a "no action letter" which effectively closed the complaint. This occurrence did not evolve into an arbitration and the customer chose not to pursue it. Testimony was provided during the expungement hearing that the customer was charged a 1% commission which was quite low compared to the typical 5% at that time. Based upon the testimony provided and the documents identified, this occurrence should be expunged in accordance with FINRA Rule 2080 (a)(1)(C), the claim is false.

3. 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 events 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:

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-hearing Conference: January 12, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: July 14, 2021	1 session	
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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

Howard L. Sobel

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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

Howard L. Sobel

Howard L. Sobel
Sole Public Arbitrator

07/21/2021

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.

July 22, 2021

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