

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Charles K. Miller

Case Number: 20-03194

vs.

Respondents
Citicorp Investment Services
Banc of America Investment Services, Inc.
Wells Fargo Clearing Services, LLC
Wells Fargo Securities, LLC

Hearing Site: Boca Raton, Florida

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. Members

REPRESENTATION OF PARTIES

For Claimant Charles K. Miller: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent Citicorp Investment Services (“Citicorp”): Adam Kauff, Esq., Kauff Laton Miller, LLP, New York, New York.

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

For Respondents Wells Fargo Clearing Services, LLC (“Wells Fargo”), and Wells Fargo Securities, LLC (“Wells Fargo Securities”): Demian J. Betz, Esq., Wells Fargo Legal Department, Charlotte, North Carolina.

CASE INFORMATION

Petition for Expungement filed on or about: September 11, 2020.

Amended Petition for Expungement filed on or about: November 16, 2020.

Charles K. Miller signed the Submission Agreement: September 11, 2020.

Statement of Answer to Amended Petition for Expungement filed by Respondent Citicorp on or about: December 10, 2020.

Citicorp signed the Submission Agreement: December 14, 2020.

Statement of Answer to Petition for Expungement filed by Respondent Banc of America on or

about: November 3, 2020.

Banc of America signed the Submission Agreement: November 3, 2020.

Statement of Answer to Amended Petition for Expungement filed by Respondent Wells Fargo on or about December 31, 2020.

Wells Fargo did not sign the Submission Agreement.

Wells Fargo Securities signed the Submission Agreement: December 31, 2020.

CASE SUMMARY

In the Petition for Expungement, 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 to Amended Petition for Expungement, Respondent Citicorp stated that it did not oppose Claimant's expungement request and denied various allegations made in the Statement of Claim.

In the Statement of Answer to Petition for Expungement, Respondent Banc of America took no position on Claimant's expungement request and asserted various affirmative defenses.

In the Statement of Answer to Amended Petition for Expungement, Respondent Wells Fargo took no position on Claimant's expungement request, denied various allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Petition for Expungement, as amended, Claimant requested: expungement of Occurrence Numbers 1097566, 1468261 and 1664202; and compensatory damages in the amount of \$1.00 from Respondents.

In the Statement of Answer to Amended Petition for Expungement, Respondent Citicorp opposed and requested denial in its entirety of Claimant's request for \$1.00 in compensatory damages.

In the Statement of Answer to Petition for Expungement, Respondent Banc of America objected to Claimant's request for \$1.00 in compensatory damages.

In the Statement of Answer to Amended Petition for Expungement, Respondent Wells Fargo requested denial of liability to Claimant's request for \$1.00 or any award of compensatory damages.

At the beginning of 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 or about November 16, 2020, Claimant filed with FINRA Dispute Resolution Services a notice of dismissal without prejudice against Respondent Wells Fargo Securities. On or about November 16, 2020, Claimant also filed with FINRA Dispute Resolution Services an Amended Petition of Expungement naming Respondent Wells Fargo in place of Respondent Wells Fargo Securities. Therefore, the Arbitrator made no determination with respect to any of the relief requests against Respondent Wells Fargo Securities.

Respondent Wells Fargo 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 or about April 16, 2021, Claimant advised that the customers in Occurrence Numbers 1097566, 1468261 and 1664202 (“Customer A, Customer B and Customer C”) were served with a copy of the Amended Petition for Expungement, notice of the date and time of the expungement hearing and of the Customers’ right to participate therein. On or about April 16, 2021, Claimant filed with FINRA Dispute Resolution Services proof of service via FedEx upon the Customers, advising that the Customers were served on or about February 24, 2021, with a copy of the Amended Petition for Expungement and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on April 22, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent Citicorp participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

Respondent Banc of America participated in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

Respondent Wells Fargo participated in the expungement hearing and, as stated in the Statement of Answer, took no position on 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.

On or about April 16, 2021, Claimant filed with FINRA Dispute Resolution Services a Memorandum of Law in Support of Expungement representing that there is no corresponding settlement agreement in connection with Occurrence Number 1468261 because this matter was resolved through a repurchase, but not pursuant to a settlement agreement. The Arbitrator determined that no further steps were required in this regard.

The Arbitrator noted that the disputes related to Occurrence Numbers 1097566 and 1664202 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings and other papers filed in this case; Claimant's Memorandum of Law in Support of Expungement, along with Exhibits and supplemental Exhibits; the parties' representations at the expungement hearing; and 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 Numbers 1097566, 1468261 and 1664202 from registration records maintained by the CRD for Claimant Charles K. Miller (CRD Number 1510072) with the understanding that, pursuant to Notice to Members 04-16, Claimant Charles K. Miller 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:

Claimant has worked in the securities industry for twenty-five (25) years and has been employed by various firms.

Occurrence Number 1097566

Occurrence Number 1097566 involved an allegation that Claimant did not recommend investments in a mutual fund portfolio consistent with Customer A's investment objective of capital appreciation. At that time, Claimant was working with Respondent Citicorp. Customer A invested in four (4) different mutual funds. Claimant recommended that Customer A maintain an amount in an FDIC-insured money market account. It was not long after those investments that the securities markets fell precipitously in what is known as the "dotcom crash." The crash affected every sector of the investment markets. As a result of the decline in Customer A's account, in 2002, Customer A filed a complaint with

Respondent Citicorp alleging the mutual fund portfolio was “unsuitable” in light of Customer A’s investment objective. Notwithstanding the filing of this complaint, Customer A remained Claimant’s customer while Respondent Citicorp investigated the matter. Respondent Citicorp denied Customer A’s complaint. After that denial, Customer A did nothing further and, in fact, continued to have Claimant handle her investments until 2004, when Claimant left Respondent Citicorp to join Respondent Wells Fargo. Between 2002 and 2004, Customer A sustained appreciation in her account at Respondent Citicorp and did not suffer any realized losses. Claimant’s testimonial and documentary evidence was unchallenged and fully credible. Consequently, the Arbitrator recommended that Occurrence Number 1097566 be expunged from Claimant’s CRD pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

Occurrence Number 1468261

Customer B purchased Auction Rate Securities (“ARS”) on a routine basis through Respondent Banc of America. Claimant was not involved in any way in those purchases because, in his role as a private banker, he was precluded from soliciting customers and/or recommending investments. Rather, as the Private Client Advisor (“PCA”) and Senior Vice President (“SVP”) for Respondent Banc of America, Claimant only was involved in the management of the banking relationship. Customer B made his purchases of ARS with the assistance of his dedicated financial advisor at Respondent Banc of America, a procedure that he followed for years with other firms. Claimant was not present during discussions with Customer B’s financial advisor in relation to the purchase of ARS. For this reason, it is factually impossible that Claimant had made misrepresentations about ARS to Customer B. Respondent Banc of America entered into an agreement with securities regulators regarding Customer B’s purchases. This agreement included that Respondent Banc of America would repurchase Customer B’s ARS from him and other customers for their full par value. As a result of the repurchase agreement, Customer B suffered no losses. Because Claimant was not Customer B’s financial advisor who recommended the ARS purchases, Claimant made no representations to Customer B about the ARS. As such, Claimant was “not involved in the alleged investment-related sales practice violation” as reported on his CRD. For all of the above reasons, the Arbitrator recommended that Occurrence Number 1468261 be expunged from Claimant’s CRD pursuant to FINRA Rules 2080(b)(1)(A), 2080(b)(1)(B) and 2080(b)(1)(C).

Occurrence Number 1664202

In 2004, Customer C and his wife purchased an American International Group, Inc. (“AIG”) fixed annuity with Claimant’s assistance. Customer C and his wife intended they would be joint owners of the annuity with Customer C’s wife listed as the annuitant. The proceeds would pass to their charity of choice in Prague, Czechoslovakia upon both their deaths. Some confusion arose after Customer C’s wife passed away. AIG refused to pay the annuity benefits to Customer C. As a last resort, Customer C filed suit in state court to recover the proceeds, naming AIG and Respondent Wells Fargo as defendants. Claimant was not a defendant in that lawsuit. The dispute eventually was resolved to Customer C’s satisfaction with AIG paying him the annuity proceeds. After that, Occurrence Number 1664202 was designated “closed-no action” on the Claimant’s CRD. Additionally, Customer C wrote FINRA on Claimant’s behalf asking it to expunge any mention of

Claimant's connection to the complaint lodged in this matter. For all of the above reasons, the Arbitrator recommended that Occurrence Number 1664202 be expunged from Claimant's CRD pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Respondents Citicorp, Banc of America, Wells Fargo and Wells Fargo Securities are each 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: February 16, 2021	1 session	

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

Martin A. Feigenbaum

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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

Martin A. Feigenbaum

Martin A. Feigenbaum
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)