

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jason Luke Zahtila

Case Number: 20-03195

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: Michael H. Ference, Esq., and Thomas McEvoy, 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 6, 2020.
American Capital Partners, LLC signed the Submission Agreement: November 9, 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 contest Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1566150 and 1433899; and compensatory damages in the amount of \$1.00 from Respondent. In the Statement of Answer, Respondent requested that any request for monetary damages or compensation 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.

On October 12, 2021, Claimant advised that the customers in Occurrence Numbers 1566150 and 1433899 were 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 November 17, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

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

The customers in Occurrence Numbers 1433899 and 1566150 did not participate in the expungement hearing, however, the customer in Occurrence Number 1433899 submitted a written opposition to Claimant's expungement request. 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 Numbers 1433899 and 1566150, 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 and that Claimant did not contribute to the settlement amount in Occurrence Number 1433899. The Arbitrator noted that Claimant contributed to the settlement amount in Occurrence Number 1566150, however, the Arbitrator recommends expungement of this Occurrence because Claimant's contribution was required by the firm due to an indemnification clause in his employment contract with the firm.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report; the pleadings; the exhibits; Claimant's testimony; and the testimony of Respondent's corporate representative.

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 1566150 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 claim for fraud and breach of contract is false. The evidence showed that the customer filled out a new account form indicating a high net worth, substantial income from his home moving and storage business, and an investment objective of "speculation." This was a non-discretionary account, and the customer received written confirmation of all trades as well as monthly account statements. The customer had accounts at a number of brokerage firms and a small proportion of his liquid net worth invested with Claimant at Respondent's firm. Claimant recommended stock in large cap companies, consistent with the customer's risk tolerance. When the stock market crashed in or about 2007 and 2008, the stocks went down, and the customer lost money. However, the customer never complained to Respondent or otherwise until a year later when a FINRA arbitration was filed. There does not appear to be any evidence of fraud or breach of contract on Claimant's part, and, in fact, it appears from the evidence that Claimant recommended suitable investments in accordance with the customer's risk tolerance. The customer chose to sell the stocks against Claimant's advice in a down market; had the customer held onto the stocks, they would have been way up at this point in time. Finally, Respondent conducted an investigation and found that the charges were false. Respondent settled with the customer to avoid litigation costs.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1433899 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 charges of churning and unsuitability were false. The customer filled out a new account form indicating a high net worth, investment experience, and substantial income. The customer's objective was at first "growth," but later, in an updated document, stated "speculation." The account was non-discretionary, and Claimant testified that he recommended large-cap stocks such as Microsoft, Starbucks, United Healthcare, etc. During the market crash of 2008, the customer sold the stocks against the advice of Claimant to "ride out" the crash. Had the customer held onto the stocks, they would have gone up substantially by this time. The customer did not complain about the account but closed it in mid-2008 and then shocked Claimant with a FINRA complaint in late 2008. The stocks appeared to be suitable for the customer's risk tolerance, net worth, and so on. In addition, an expert analysis of the account showed that during the life of the account, turnover was only 3.58%, not particularly high. In addition, I note that Claimant did not have control over the account. Finally, Respondent did a full investigation and found no unsuitability or churning; it settled with the customer in order to save litigation costs.

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 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

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 1, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: November 17, 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

Ellyn S. Roth

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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

Ellyn S. Roth

Ellyn S. Roth
Sole Public Arbitrator

11/30/2021

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.

December 01, 2021

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