

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jason Luke Zahtila

Case Number: 20-03196

vs.

Respondents
American Capital Partners, LLC
Commerce One Financial Inc.

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. Members

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Jason Luke Zahtila: Thomas McEvoy, Esq., and Michael 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.

For Respondent Commerce One Financial Inc.: Thomas J. Jennings, Commerce One Financial Inc., Jericho, 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 American Capital Partners, LLC on or about: November 6, 2020.

American Capital Partners, LLC signed the Submission Agreement: November 9, 2020.

Statement of Answer filed by Respondent Commerce One Financial Inc. on or about: October 1, 2020.

Commerce One Financial Inc. signed the Submission Agreement: October 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 American Capital Partners, LLC denied any wrongdoing and did not contest Claimant’s expungement request.

In the Statement of Answer, Respondent Commerce One Financial Inc. did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1746078 and 1162415; and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent American Capital Partners, LLC requested that any request for monetary damages be denied.

In the Statement of Answer, Respondent Commerce One Financial Inc. did not set forth a specific relief request.

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 January 3, 2022, Claimant advised that the customers in Occurrence Numbers 1746078 and 1162415 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 January 6, 2022, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents American Capital Partners, LLC and Commerce One Financial Inc. did not participate in the expungement hearing.

The customers in Occurrence Numbers 1746078 and 1162415 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 1746078, 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. Although, Claimant contributed the full settlement amount, the Arbitrator still recommends expungement because Claimant was required to indemnify Respondent American Capital Partners, LLC as a condition of his employment.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1162415. Due to the age of the underlying Occurrence, the settlement agreement disposing of the claim is no longer available. The Arbitrator considered the amount of payment made to any party to the settlement. Based on Claimant's testimony, the Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. Although, Claimant contributed the entire settlement amount, the Arbitrator still recommends expungement as Claimant was required to indemnify Respondent Commerce One Financial Inc. as a condition of his employment.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 1746078 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:

Claimant credibly testified that in early 2013 the customer told him he was closing his account because he was having business reversals. Two years later the customer filed his complaint. The complaint alleged unsuitability and churning. Claimant credibly testified that the customer, with whom he spoke once a week was a very successful business owner who had been investing in the market for years. The account was a non-discretionary and the customer approved, ratified, and authorized all trades.

The customer's account form, customer verification forms, account statements and activity letters all affirmed and confirmed that the customer's investment objective was speculation. The customer had also executed a margin agreement which further confirmed his interest in speculation. At no time did the customer contact either Claimant or the Compliance Department at American Capital Partners, LLC ("ACP") to change his investment objectives. At no time did the customer ever complain to Claimant about his account. Claimant credibly testified that the c-'s account turnover ratio was 2.05, a rate that is acknowledged in the industry that does not constitute churning.

The President of ACP testified on behalf of Claimant. He credibly testified that ACP did a thorough investigation of the customer's complaint and interviewed not only the Claimant but also his assistant and the receptionist. He further testified that ACP engaged a specialist to conduct a mathematical analysis of the churning allegation. This analysis determined that the account turnover was 2.05, far below the industry standard threshold, churning determination of 6. The President of ACP credibly testified that he reached the conclusion that there was no merit in the customer's complaint.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1162415 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:

Claimant credible testified that he joined Murjen Financial, Inc. ("Murjen" now known as Commerce One Financial Inc.) in 1999 and acquired the customer in mid-2000. He further testified that the customer opened a non-discretionary account, specifying maximum risk and speculation. Claimant further testified that he spoke with the customer once a week. The client accepted some of Claimant's recommendations and rejected others. The client had total control over his account and received confirmations for every trade.

Claimant testified that the customer purchased 10,000 shares of Nextel and authorized and purchased an additional 40,000 shares. Although Claimant testified that he recommended the purchase of the additional 40,000 shares, the customer did not reject the recommendation. The customer issued the check for 40,000 shares but when the stock price fell, the customer called Claimant and stated that he wanted to stop payment on his check.

The Chief Executive Officer (“CEO”) of Murjen testified credibly that in mid-2002 he was informed that there was an unauthorized trade of 40,000 shares of Nextel. The CEO credibly testified that he spoke with Claimant who stated that the trade had been executed. The CEO further testified that he spoke with the customer who stated, “it’s down, now I want out”. The CEO further testified that at no time did the customer deny authorization of the trade.

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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents American Capital Partners, LLC, and Commerce One Financial Inc. are each 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 100.00
Pre-Hearing Conferences: January 11, 2021 1 session
June 7, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: January 6, 2022 1 session

Total Hearing Session Fees = \$ 150.00

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

Madelon M. Rosenfeld

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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

Madelon M. Rosenfeld

Madelon M. Rosenfeld
Sole Public Arbitrator

01/11/2022

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.

January 11, 2022

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