

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Chi-Hong (Simon) Chu

Case Number: 20-03202

vs.

Respondent
American Portfolios Financial Services., Inc

Hearing Site: Jersey City, New Jersey

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

This case was administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimant Chi-Hong (Simon) Chu: Robert Moses, Esq., RJM Counsel PLLC, New York, New York.

Respondent American Portfolios Financial Services, Inc. did not enter an appearance in this matter.

CASE INFORMATION

Amended Statement of Claim filed on or about: September 15, 2020.
Chi-Hong (Simon) Chu signed the Submission Agreement: September 11, 2020.

American Portfolios Financial Services, Inc. did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Amended Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1888825, 1922620, and 1961700; and compensatory damages in the amount of \$1.00 from

Respondent.

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.

A Statement of Claim was filed on September 11, 2020. It was not served on Respondent and not considered by the Arbitrator.

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 is bound by the determination of the Arbitrator on all issues submitted.

On April 21, 2021, Claimant advised that the customers in Occurrence Numbers 1888825; 1922620; and 1961700 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on May 5, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

One of the customers in Occurrence Number 1961700 participated in the expungement hearing to oppose the expungement request.

The customers in Occurrence Numbers 1888825 and 1922620 did not participate in the expungement hearing. The Arbitrator found that the customers in Occurrence Numbers 1888825 and 1922620 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 1888825, 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 noted that Claimant did not voluntarily contribute to the settlement—he was ordered to contribute, and he was not a party to the settlement. The Arbitrator determined that expungement is therefore still appropriate.

The Arbitrator noted that the disputes related to Occurrence Numbers 1922620 and 1961700 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: Claimant's BrokerCheck® Report, the pleadings, Claimant's testimony, and the exhibits.

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 1888825 from registration records maintained by the CRD for Claimant Chi-Hong (Simon) Chu (CRD Number 4615119) with the understanding that, pursuant to Notice to Members 04-16, Claimant Chi-Hong (Simon) Chu 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; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The customers were seeking an investment that protected their principal (low risk) and provided a reasonable return. The client's intake form indicated they had moderate risk tolerance and a mid-term (6-10 year) investment time frame. The Claimant recommended a variable annuity with a rider that guaranteed income for life and discussed the investment and its characteristics. The customers were given the prospectus and other pertinent investment documentation provided by the annuity sponsor and they signed off on the investment. The customers did not follow and/or understand what their responsibilities were under the annuity to receive the full guarantee and withdrew money early. The customers then filed a complaint for an unsuitable investment. The Claimant met his fiduciary duty in properly explaining how this investment worked. The complaint was settled by National Planning Corporation ("NPC") and NPC denied any liability or wrongdoing in the settlement. The Claimant was not a party to the settlement and FINRA took no disciplinary action against Claimant.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1922620 from registration records maintained by the CRD for Claimant Chi-Hong (Simon) Chu (CRD Number 4615119) with the understanding that, pursuant to Notice to Members 04-16, Claimant Chi-Hong (Simon) Chu 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; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

In 2014, the customer wanted to transfer money to his daughter while maintaining control over the money and lowering his tax burden. The Claimant offered the customer a life insurance policy to meet his requirements. The customer was unable to be insured due to health issues, so the policy was issued insuring his daughter and he would pay the premiums. The policy was explained in detail to both the customer and his daughter and policy documents were signed by his daughter acknowledging her understanding of the policy. The Claimant helped him liquidate other investments to fund the premiums. In 2017, the customer filed a written complaint with the issuer of the policy, alleging that the fees and costs of the policy were not disclosed. After an investigation, it was determined that the policies were properly presented and the customer “received ample policy disclosures concerning the non-guaranteed and guaranteed aspects of the policies, as well as detailed disclosures of the costs, fees and surrender charges.” A further complaint was filed with the NJ Department of Banking and Insurance. Neither the NJ Department of Banking and Insurance, FINRA, Voya nor NPC took disciplinary action against Claimant. The complaint was required to be reported on Claimant’s BrokerCheck report. No damages were paid to the customer and no further complaints were received.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1961700 from registration records maintained by the CRD for Claimant Chi-Hong (Simon) Chu (CRD Number 4615119) with the understanding that, pursuant to Notice to Members 04-16, Claimant Chi-Hong (Simon) Chu 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 and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

In 2012, the customers indicated to Claimant that they were looking to invest retirement money in an investment that protected the principal while earning a higher return. Claimant recommended the Jackson National Perspective II variable annuity which has a guaranteed minimum return rider, provided no withdrawals are taken in the year. Claimant explained to the customers that this was a long-term investment due to a 7-year surrender charge. The customers were given prospectuses and other disclosure

literature. Additionally, they submitted applications and paperwork to NPC and Jackson. The customers added additional funds to this investment over the next few years. They also kept their accounts with Claimant when he moved to Respondent's employment. In 2017, the customers filed a written complaint alleging that the Claimant misrepresented the variable annuity, including the fees, surrender charges and surrender period. The customers were seeking the waiver of the surrender charges. An investigation found no wrongdoing and noted that the value of the investment had increased significantly. Because more money was invested in this variable annuity after the Claimant move to Respondent, they also investigated the claim. This investigation noted that the customers certified in the transfer paperwork that they understood the annuity to be a long-term investment. Claimant met his fiduciary duty in properly explaining how this investment worked. The complaint was required to be reported on Claimant's BrokerCheck report and no damages were paid to the customers and no further complaints were received.

4. 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 event giving rise to the dispute. Accordingly, as a party, Respondent American Portfolios Financial Services, Inc. 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: May 5, 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

Marvin L. Schuldiner

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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

Marvin L. Schuldiner

Marvin L. Schuldiner
Sole Public Arbitrator

05/24/2021

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.

May 24, 2021

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