

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Kevin W. Higginbotham

Case Number: 20-03205

vs.

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Atlanta, Georgia

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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

**REPRESENTATION OF PARTIES**

For Claimant Kevin W. Higginbotham (“Claimant”): Kurt T. Kalberer, II, Esq., Kalberer LLP, New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

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

Statement of Answer filed on or about: November 19, 2020.  
Respondent signed the Submission Agreement: November 19, 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 took no position on Claimant’s expungement request and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1693050 and 1549804 and \$1.00 in compensatory damages.

In the Statement of Answer, Respondent opposed Claimant's request for \$1.00 in compensatory damages.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

**OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

The Arbitrator conducted a recorded, telephonic hearing on March 30, 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, took no position on the request for expungement.

The customers related to Occurrence Numbers 1693050 and 1549804 did not participate in the expungement 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:

Claimant's request for expungement of Occurrence Numbers 1693050 and 1549804 from his registration records maintained by the CRD is denied.

**FEES**

Pursuant to the Code of Arbitration Procedure, 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 @ \$50.00/session		= \$	50.00
Pre-Hearing Conference: January 19, 2021	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: March 30, 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**

Mollie Wagner Neal

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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**

***Mollie Wagner Neal***

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Mollie Wagner Neal  
Sole Public Arbitrator

**04/16/2021**

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Signature Date

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April 16, 2021

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