

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Debra P. Stokes

Case Number: 20-03212

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith 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. Member

REPRESENTATION OF PARTIES

For Claimant Debra P. Stokes: Dochter Kennedy MBA, J.D., and Chelsea Masters, Esq., Advisor Law LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”): Kathryn D. Perrault, Esq., Bressler, Amery & Ross, PC, Birmingham, Alabama.

CASE INFORMATION

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

Statement of Answer filed by Respondent on or about: November 4, 2020.
Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: November 4, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following cause of action: expungement of Claimant’s Form U5 based on the defamatory nature of the entry.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award granting expungement of the Form U5 corresponding with Occurrence Number 1492649, and those relevant portions of the Form U4, from Claimant's CRD record; compensatory damages in the amount of \$1.00; and any other relief as deemed just and equitable.

In the Statement of Answer, Respondent requested that Claimant's request for expungement and any form of monetary relief should be denied.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 13, 2020, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On November 30, 2020, Claimant filed an Opposition to the Motion to Dismiss. On December 7, 2020, Respondent filed a Reply in support of the Motion to Dismiss.

On January 26, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. On January 27, 2021, Respondent filed a Sur-Reply which was described as a "Letter in response to the FINRA Awards" Claimant cited during oral arguments on the Motion to Dismiss.

On February 25, 2021, the Arbitrator granted the Motion to Dismiss on the grounds that:

Rule 13206(a) states in part that: "No claim shall be eligible for submission under the Code where six years have elapsed from the occurrence or event giving rise to the claim." In this case, the Claimant was terminated from Merrill Lynch on January 11, 2020. Merrill Lynch filed the Form U5, disclosing Claimant's discharge and the reasons for the termination, on February 5, 2010. Claimant filed the Statement of Claim in this arbitration on September 11, 2020. Claimant argues that the internet has become ubiquitous and when FINRA passed amendments to Rule 2210 in 2016, requiring Members' websites and hyperlink to BrokerCheck, Claimant suffered new harm that she did not endure from February 2010 until June 2016. Furthermore, the Claimant argues that the date of the earliest possible "event or occurrence" giving rise to her expungement request would be in 2016.

On the contrary, the Respondent argues that the "occurrence or event" giving rise to Claimant's claim, was when Merrill Lynch filed the Form U5 termination disclosure, which was more than ten (10) years before Claimant filed this arbitration. The Arbitrator agrees that the "occurrence or event" was when Merrill Lynch filed the Form U5. Therefore, more than six years have elapsed from the occurrence or event giving rise to the claim and the Motion to Dismiss under FINRA Rule 13206(a) is granted.

Respondent's Motion to Dismiss pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing her claims in court pursuant to Rule 13206(b) of the Code.

AWARD

After considering the pleadings, the testimony and evidence presented at the recorded January 26, 2021 pre-hearing conference, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed without prejudice, pursuant to FINRA Rule 13206.

FEES

Pursuant to the Code of Arbitration Procedure ("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 event giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 100.00

Pre-Hearing Conferences: January 5, 2021 1 session

January 26, 2021 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$50.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Selma Moy

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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

Selma Moy

Selma Moy
Sole Public Arbitrator

03/01/2021

Signature Date

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March 01, 2021

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