

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
William Lance Hocutt

Case Number: 20-03217

vs.

Respondent
Ameriprise Financial Services, LLC

Hearing Site: Birmingham, Alabama

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 William Lance Hocutt: Anne T. Freeland, Esq. and Richard F. Ensor, Esq., Michael Best & Friedrich, LLP, Cottonwood Heights, Utah.

For Respondent Ameriprise Financial Services, LLC: Howard M. Klausmeier, Esq., VP and Chief Counsel, Ameriprise Financial Services, Inc., Minneapolis, Minnesota.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.

William Lance Hocutt signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent on or about: November 5, 2020.

Ameriprise Financial Services, LLC signed the Submission Agreement: November 3, 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 supported Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1214657 (“Customer A”), 1501780 (“Customers B”), and 1548896 (“Customer C”); compensatory

damages in the amount of \$1.00; and such and further relief as the Arbitrator deems just and proper.

In the Statement of Answer, Respondent requested: a recommendation of expungement of the subject customer complaints from Claimant's CRD record; a denial of all requested damages against Respondent; and an assessment of all costs and fees against Claimant that have been or will be incurred by Respondent, including but not limited to the member surcharges and hearing fees, relating to this arbitration matter.

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 March 16, 2021, Claimant advised that Customers B and Customer C were served with the Statement of Claim and notice of the date and time of the expungement hearing on March 9, 2021 and March 15, 2021, respectively. Also, on March 16, 2021, Claimant advised that Customer A is deceased, and the Personal Representative of her estate was served with the Statement of Claim and notice of the date and time of the expungement hearing on March 11, 2021.

The Arbitrator conducted a recorded, telephonic hearing on April 13, 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, supported the request for expungement.

The Customers 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 1501780, 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. Claimant paid the insurance deductible associated with the settlement of Occurrence Number 1501780. Despite Claimant paying the insurance deductible, the Arbitrator determined that expungement of this occurrence is appropriate.

The Arbitrator noted that the disputes related to Occurrence Numbers 1214657 and 1548896 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 testimony, Claimant's BrokerCheck Report, the documentary evidence for

Occurrence Numbers 1214657 and 1548896, the settlement agreement for Occurrence Number 1501780, and the FINRA letter to Customer C for Occurrence Number 1548896.

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 Numbers 1214657, 1501780, and 1548896 from registration records maintained by the CRD for Claimant William Lance Hocutt (CRD Number 2948022) with the understanding that, pursuant to Notice to Members 04-16, Claimant William Lance Hocutt 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.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

In the Statement of Answer, Respondent stated it will concur with Claimant’s request for expungement of all three customer claims if Claimant is able to sustain his burden of proof regarding Rule 2080(b)(1). Claimant submitted proof of service of the Statement of Claim and notice of the right to provide written information and to appear at the hearing to the customers in all three occurrences.

Occurrence Number 1214657:

According to the Statement of Claim and Claimant’s testimony, Customer A’s claim alleged that Claimant recommended that Customer A sell her Class B and C mutual funds eleven months after their purchase, thereby incurring surrender charges. Additionally, Customer A’s claim questioned the appropriateness of utilizing the margin capabilities of her account due to her age. The complaint requested a nominal amount of damages. Respondent denied the claim, and there was no settlement agreement according to the Statement of Claim and Claimant’s testimony. Claimant’s testimony, as well as the extensive communications with Customer A documented in Exhibits A and B, demonstrate that Customer A was fully

informed and made the ultimate investment decisions in keeping with her needs and risk tolerances.

Thus, the claim meets the criteria for expungement relief under FINRA Rule 2080(b)(1)(A), (B) and (C) because it was factually impossible or clearly erroneous; Claimant was not involved in any alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation or information is false.

Furthermore, as stated in the Statement of Claim, Respondent's reporting of this claim and the inclusion of this claim on the CRD system appear to be erroneous, as the complaint does not appear to qualify as a reportable event under FINRA Rule 4530. Additionally, according to Claimant's testimony and Exhibit C, in January 2007, Respondent advised Claimant that the complaint, according to NASD rules at the time, had expired and no longer had to be disclosed. There is no further information on any NASD rules or evidence as to why this complaint was not removed from Claimant's record.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1214657 because Rules 2080(b)(1)(A), (B), and (C) have been satisfied.

Occurrence Number 1501780:

According to the Statement of Claim and Claimant's testimony, Customers B's claim alleged that, in November 2009, there was a delay in the transfer of their 401(k) plan to Nationwide. Customers B alleged that Claimant represented that during the transfer of their 401(k) plan, funds would remain uninvested for no longer than a single 24-hour period. Customers B further alleged that the transfer took five days and resulted in a loss due to the increase in the market value of the 401(k) plan's investments during said period. Claimant testified that he was not responsible for the transfer of the funds as that was controlled by the fund's administrators. He also testified that his statement to Customers B was simply passing along the information provided by the fund's administrators. Claimant testified that the delay was caused by the actions of the administrators and through no wrongdoing on his part.

The Arbitrator reviewed the settlement agreement (Exhibit G) in this matter. Claimant and Respondent paid less than half of Customers Bs' requested damages in order to settle the case, with Claimant contributing one-fifth of the total amount. Claimant testified that his payment amounted to the insurance deductible under the errors and omissions policy. The settlement agreement contains no admission of liability and no agreement by any party to not oppose a request for expungement. It also provides that the purpose of the payment is solely for the purpose of avoiding the expense and time involved in defending litigation. Taking into account the facts that the total settlement amount was less than one-half of the total claim and was made solely for the purpose of ending the arbitration action, as well as the facts that Claimant's payment was only one-fifth of the amount paid and that he made the payment only as an insurance deductible, Claimant's contribution to the settlement does not suggest culpability on his part.

Claimant's testimony that he continued to serve as investment advisor to the client afterward lends credence to the allegations in the Statement of Claim that the settlement was entered into in order to maintain the relationship with the client. These facts demonstrate that the issues in this claim involved administrative issues and actions of the other parties named in the arbitration, as opposed to any intentional wrongdoing on the part of Claimant. The

Arbitrator finds that the claim meets the criteria for expungement under Rule 2080(b)(1)(A) because the claim against Claimant was factually impossible or clearly erroneous, and under Rule 2080(b)(1)(B) because Claimant was not involved in an alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds. Therefore, the Arbitrator recommends expungement of Occurrence Number 1501780 because Rules 2080(b)(1)(A) and (B) have been satisfied.

Occurrence Number 1548896:

According to the Statement of Claim and Claimant's testimony, Customer C's complaint to Respondent alleged that the unit investment trust ("UIT") in which she invested in September 2010 was unsuitable. Customer C requested a nominal sum in damages. Respondent investigated the complaint and, finding no merit to the allegations, denied the complaint. After Respondent denied the complaint, Customer C abandoned her claim and took no further action. The testimony of Claimant, as well as Exhibits E through L, demonstrate many communications with Customer C. These communications, along with the prospectus and other disclosures made in the sale and purchase of the investment in the UIT trust, provide sufficient evidence that it was suitable and in accord with Customer C's expressed needs, objectives, and risk tolerance. Claimant's testimony and the exhibits confirm that Customer C approved the investment after the recommendations and alternative investments were discussed with her. Customer C asserted that she did not receive the letter, included as Exhibit H, but even if she had not received it, Claimant's testimony confirmed the facts stated therein, and there is plenty of other evidence in Claimant's testimony and the other exhibits to find Customer C's claim without merit.

The claim meets the criteria for expungement under Rules 2080(b)(1)(A) and (C) because the claim against Claimant was factually impossible or clearly erroneous and the claim, allegation or information is false. Additionally, as stated in the Statement of Claim, Customer C's claim does not appear to qualify as a reportable event under Rule 4530, nor should it be included in the CRD system, and thus should be expunged as clearly erroneous. The FINRA letter to Customer C in Exhibit D stating that FINRA has closed its investigation of Customer C's claim is not afforded any evidentiary weight in accordance with its terms.

Therefore, the Arbitrator recommends expungement of Occurrence Number 1548896 because Rules 2080(b)(1)(A) and (C) have been satisfied.

2. 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 events giving rise to the disputes. 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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: January 18, 2021	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 13, 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

Joseph Neal Richardson

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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

Joseph Neal Richardson

Joseph Neal Richardson
Sole Public Arbitrator

04/28/2021

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.

April 28, 2021

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