

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Dennis Daniel Herrera

Case Number: 20-03220

vs.

Respondents

John Thomas Financial
Hunter Scott Financial, LLC
Aegis Capital Corp.

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 Dennis Daniel Herrera (“Claimant”): Michael H. Ference, Esq. and Thomas P. McEvoy, Esq., Sichenzia Ross Ference, LLP, New York, New York.

Respondent John Thomas Financial (“JTF”) did not enter an appearance in this matter.

Respondent Hunter Scott Financial, LLC (“HSF”) did not enter an appearance in this matter.

For Respondent Aegis Capital Corp. (“ACC”): Timothy Treble, CCO, and Kevin Meade, CO, Aegis Capital Corp., New York, New York.

CASE INFORMATION

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

Claimant signed the Submission Agreement: September 11, 2020.

Respondent JTF did not file a Statement of Answer or sign the Submission Agreement.

Respondent HSF did not file a Statement of Answer or sign the Submission Agreement.

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

Respondent ACC signed the Submission Agreement: June 25, 2021.

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 ACC did not contest Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested that the Panel issue an award for damages in the amount of \$1.00 and order the expungement of all references to Occurrence Numbers 1649154 ("Customer A") and 1376926 ("Customer B"), hereinafter collectively as the "Customers," from Claimant's registration records maintained by the CRD.

In the Statement of Answer, Respondent ACC denied any and all liability or wrongdoing, and denies any request for monetary damages or compensation.

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.

Respondents JTF and HSF did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and are bound by the determination of the Arbitrator on all issues submitted.

Respondents JTF and HSF did not file Statements of Answer. The Arbitrator determined that Respondents JTF and HSF were served with the Claim Notification letters dated September 14, 2020, and the Overdue Notice dated November 4, 2020, by certified and regular mail. The Arbitrator also determined that Respondents JTF and HSF were served with the Notification of Panel dated December 1, 2020, by certified and regular mail.

The Claim Notification letters notified Respondents JTF and HSF that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondents JTF and HSF failed to register for the DR Portal.

On May 17, 2021, Claimant advised that the Customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On June 29, 2021, Respondent ACC submitted notice that it did not oppose Claimant's expungement request and would not attend the hearing on July 8, 2021.

The Arbitrator conducted a recorded hearing by videoconference on July 8, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents did not participate in the expungement hearing. The Arbitrator found that Respondents had notice of the expungement request and hearing.

The Customers 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 1649154, 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 and that Claimant contributed to the settlement amount. The Arbitrator found that Claimant settled this matter purely as a business and cost-of-defense decision.

The Arbitrator did not review any settlement documentation related to Occurrence Number 1376926, but the Arbitrator did review the settlement information on Claimant's CRD Record. The Arbitrator 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 and that Claimant did not contribute to the settlement amount. The Arbitrator found that Claimant's prior firm settled this matter purely as a business and cost-of-defense decision.

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

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 1649154 and 1376926 from registration records maintained by the CRD for Claimant Dennis Daniel Herrera (CRD Number 4618370) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dennis Daniel Herrera 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:

Upon a complete review of the pleadings and other materials filed by the Parties and the testimony and the introduction of documentary evidence at the telephonic hearing on January 9, 2020, the Arbitrator finds as follows:

The Occurrence Numbers for which Claimant requests expungement are 1649154 and 1376926.

At the hearing, Claimant withdrew his request for \$1.00 in compensatory damages against Respondents. Respondent ACC is an active firm, and Respondents JTF and HSF are inactive firms.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and noted, supplemented by Claimant's testimony and documentary evidence, that Customer A proceeded with a complaint in his home state of Nebraska. Customer B settled his case after complaining about a transaction.

Claimant (a New York resident) settled the claim with Customer A for a cost-benefit amount to avoid the expense of preparing and defending a case in Nebraska. Claimant offered into evidence a copy of the Settlement Agreement dated January 24, 2014.

Customer B's claim against Claimant is false because Claimant had no dealing with Customer B on the alleged investment in issue. Claimant learned about the claim after moving to another firm and was informed that his prior firm had settled the case without Claimant's participation and without contribution from Claimant.

Notices of the expungement hearing to both Customers were received into evidence. Neither Customer responded nor appeared for the hearing.

In recommending expungement for both Occurrence Numbers, the Arbitrator relied upon the following documentary or other evidence: the pleadings, party submissions, Claimant's testimony, documentary evidence, and Claimant's BrokerCheck® Report.

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Occurrence Number 1649154 (Case Number 13-00771):

The Arbitrator recommends expungement of all references to this matter from the registration records maintained by the CRD for Claimant.

Claimant provided Customer A with information regarding a Private Placement of securities that Customer A reviewed with his lawyers and business accountant. Customer A made an initial investment through Claimant as broker, but subsequently made other investments directly with the Offeror of the Private Placement. The investment ultimately failed when the Offeror's business collapsed. Upon filing an arbitration in Nebraska, Customer A's home

state, the claim was settled for a nominal amount following Claimant's assessment, with his attorney, that the expense of hiring counsel, traveling to Nebraska, and preparing a defense would so far exceed the settlement, so that it made no economic sense to litigate the matter.

The Arbitrator finds the claim, allegation, or information made by Customer A to be factually false, and thus expungement of Occurrence Number 1649154 is recommended because Rule 2080(b)(1)(C) has been satisfied.

Occurrence Number 1376926:

The Arbitrator recommends expungement of all references to this matter from the registration records maintained by the CRD for Claimant.

The Arbitrator has made this finding because Claimant was not involved in the alleged investment sales practice violation. Customer B was working with a senior broker and Claimant had no dealings with Customer B after the initial intake documentation. Claimant initially filled out the paperwork for Customer B, who was then serviced by a senior broker in the firm. Claimant had no further dealings with Customer B. Accordingly, Claimant, as the registered person, was not involved in the alleged investment-related sales practice violation.

The Arbitrator finds the claim, allegation, or information made by Customer B to be factually false, and thus expungement of Occurrence Number 1649154 is recommended because Rule 2080(b)(1)(C) has 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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents are each 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 Pre-Hearing Conference: January 4, 2021	1 session	= \$	50.00
One (1) hearing session on expungement request @ \$50.00/session Hearing: July 8, 2021	1 session	= \$	50.00
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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

Gerald M. Levine

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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

Gerald M. Levine

Gerald M. Levine
Sole Public Arbitrator

07/15/2021

Signature Date

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July 15, 2021

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