

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Shaun Eugene Hayes

Case Number: 20-03243

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Dallas, Texas

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.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Shaun Eugene Hayes (“Claimant”): William M. Dailey, Esq., Dailey Law Group, Rye, New York.

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

CASE INFORMATION

Statement of Claim filed on or about: September 12, 2020.
Amended Statement of Claim filed on or about: May 11, 2021.
Claimant signed the Submission Agreement: September 11, 2020.

Statement of Answer to Amended Statement of Claim filed on or about: June 9, 2021.
Respondent signed the Submission Agreement: June 10, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, 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 to the Statement of Claim, as amended, Respondent took no position on Claimant's expungement request, but asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of Occurrence Numbers 1948471, 1963695, 1964069, 1964071, 1964072, 1964073, and 1964074 and an award of \$1.00 in damages.

In the Statement of Answer to the Statement of Claim, as amended, Respondent objected to Claimant's request for \$1.00 in damages.

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 May 11, 2021, Claimant filed an Unopposed Motion for Amendment of Statement of Claim ("Unopposed Motion to Amend"). In an Order dated May 26, 2021, the Arbitrator granted the Unopposed Motion to Amend.

On March 1, 2022, Claimant advised that one of the two customer Trustees in Occurrence 1964071 and the customers in Occurrence Numbers 1948471, 1963695, 1964069, 1964072, 1964073, and 1964074 ("Customers") were served with the Statement of Claim, as amended, and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on March 1, 2022, 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 with respect to 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 Numbers 1948471, 1963695, 1964074, 1964071, 1964072, and 1964073, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the dispute related to Occurrence Number 1964069 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; exhibits to Statement of Claim, as amended; and hearing 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:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 1948471, 1963695, 1964069, 1964071, 1964072, 1964073, and 1964074 from registration records maintained by the CRD for Claimant Shaun Eugene Hayes (CRD Number 4963876) with the understanding that, pursuant to Notice to Members 04-16, Claimant Shaun Eugene Hayes 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:

The seven former Customers filed a joint complaint in December 2017. Therefore, all seven Occurrence Numbers will be combined and discussed as a single occurrence. Claimant had provided a variety of financial services to the Customers for several years. The Customers' complaint letter alleged unauthorized trading by Claimant. Claimant testified that he was specifically regulated to conduct his business on a non-discretionary basis. Claimant asserted that he executed trades only after getting approval from the Customers. One of the seven customers expressed concern about an account several months prior to the filing of the complaint letter. When those allegations were shown to be untrue by Respondent, the allegations were withdrawn. Claimant testified that he kept in regular contact with all of his customers and none of them ever expressed any dissatisfaction with his services. Claimant refuted all allegations contained in the complaint letter and considered the Customers' claims against him to be false. Claimant testified that he was not kept informed by Respondent regarding negotiations which resulted in the settlements. Claimant did not contribute to the settlements. The Arbitrator, in finding that the claim meets the standards of FINRA Rule 2080(b)(1)(C), is recommending expungement of Occurrence Numbers 1948471, 1963695, 1964069, 1964071, 1964072, 1964073, and 1964074.

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

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 26, 2021, postponement requested by the parties = \$ 200.00
June 14, 2021, postponement requested by the parties
July 12, 2021, postponement requested by the parties
November 9, 2021, postponement requested by the parties

Total Postponement Fees = \$ 200.00

The Arbitrator has assessed \$100.00 of the postponement fees to Claimant.

The Arbitrator has assessed \$100.00 of the postponement fees to Respondent.

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 14, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: March 1, 2022 1 session

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

David A. Schuler

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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

David A. Schuler

David A. Schuler
Sole Public Arbitrator

03/09/2022

Signature Date

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March 10, 2022

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