

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

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In the Matter of the Arbitration Between:

Claimant  
Adam James Yarnold

Case Number: 20-03267

vs.

Respondent  
Deutsche Bank Securities, Inc.

Hearing Site: New York, New York

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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 Adam James Yarnold: Dochter Kennedy, MBA, J.D. and Kurt Zimmerman Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Deutsche Bank Securities, Inc.: Katherine B. Harrison, Esq., Paduano & Weintraub LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 15, 2020.

Adam James Yarnold signed the Submission Agreement: September 15, 2020.

Statement of Answer filed by Respondent on or about: December 29, 2020.

Deutsche Bank Securities, Inc. signed the Submission Agreement: December 29, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of Form U5/Termination corresponding with Occurrence Number 1412269 based on the defamatory nature of the entry in Claimant's Central Registration Depository ("CRD") records.

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 and those relevant portions of the Form U4, from Claimant's CRD record on the basis that the statement is defamatory in nature, misleading, inaccurate, and/or erroneous; expungement of the Reason for Termination explanation on Claimant's CRD record; amendment of the answer to questions 7F(1) and 7F(3) of Claimant's Form U5, from "Yes" responses to "No"; deletion of the Internal Review and Termination Disclosure Reporting Pages accompanying occurrence number 1412269, in their entirety; compensatory damages in the amount of \$1.00 from Respondent; and any other relief as deemed just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator: declare that the Respondent is not liable to Claimant in any respect; deny expungement and dismiss the Statement of Claim in its entirety; assess all costs and forum fees against Claimant; and for such other and further relief as may be deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On December 29, 2020, Respondent Deutsche Bank Securities, Inc. filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On January 28, 2021, Claimant filed a response opposing the Motion to Dismiss. On February 5, 2021, Respondent filed a Reply in support of the Motion to Dismiss. On February 23, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. On February 24, 2021, the Arbitrator granted the Motion to Dismiss on the grounds that:

Claimant's filed an application for expungement of an alleged defamatory and misleading statement that was published on his Form U5 in July 2008. Claimant was also terminated from Respondent's employment in July 2008 and the Respondent filed the Form U5 on or about July 23, 2008. That information was subsequently placed in the Broker Check system by FINRA in 2017. Claimant argues that the entry of the U5 information into the Broker Check system in 2017 amounted to a republication and a new "event or occurrence" to which the six-year Rule should apply. Respondent argues in response, that the republication was not an act taken by the Respondent but was merely making the same information available in 2008 exposed to a wider platform and greater access to the public.

As cited by the Respondent, New York law has held that a single publication rule covers published material that is subsequently placed on an internet website and the statute of limitations begins to run from the date of the first publication and not its later inclusion on an internet site. This is particularly applicable here. Respondent was not involved in the 2017 placement of the U5 information in the Broker Check system, which thereby provided greater accessibility of that information originally posted in 2008. No other arguments were made for denial of the motion by the Claimant, nor was there any claim for tolling the six-year period, nor was there any claim of a continuing occurrence by which the commencement of the six-year period would have been extended. For the foregoing reasons, Respondent's Motion to Dismiss is granted as Claimant's claim was

filed more than six (6) years from the event or occurrence is therefore time barred under FINRA Rule 13206(a).

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 his claims in court pursuant to Rule 13206(b) of the Code.

### **AWARD**

After considering the pleadings, the Motion to Dismiss and all responses thereto, and the arguments presented during the recorded 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 Rule 13206(a) of the Code. Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

### **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 Deutsche Bank Securities, 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 11, 2021	1 session	
February 23, 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**

Richard W. Vallario

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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**

***Richard W. Vallario***

Richard W. Vallario  
Sole Public Arbitrator

**03/09/2021**

Signature Date

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March 09, 2021

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