

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

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In the Matter of the Arbitration Between:

Claimant  
Andrew Chisholm

Case Number: 20-03296

vs.

Respondents  
Ameriprise Financial Services, LLC  
Michael Cooper

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: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Andrew Chisholm: Jason J. Kane, Esq., Peiffer Wolf Carr Kane & Conway APLC, Rochester, New York.

For Respondents Ameriprise Financial Services, LLC, and Michael Cooper (“Cooper”): Sydney H. Crowder, Esq., Ameriprise Financial, Inc., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: September 18, 2020.

Andrew Chisholm signed the Submission Agreement: September 18, 2020.

Joint Statement of Answer filed by Respondents on or about: October 27, 2020.

Ameriprise Financial Services, LLC signed the Submission Agreement: November 9, 2020.

Michael Cooper signed the Submission Agreement: November 9, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: violations of FINRA Rule 2110, violations of FINRA Rule 2111, negligence, violations of FINRA Rule 3010: and liability under the doctrine of respondeat superior. The causes of action relate to unspecified

securities arising out Respondents' failure to make suitable recommendations in Claimant's IRA and 401K accounts.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested unspecified compensatory damages; punitive damages; attorneys' fees, costs and other expenses; pre- and post-judgment interest; and all other sums Claimant is entitled to at law or equity.

In the Statement of Answer, Respondents requested that the Arbitration Panel dismiss the Statement of claim with prejudice; award Respondents' costs and fees; and expungement of this matter from the CRD record of Michael Cooper in accordance with FINRA rules.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The Panel reviewed Respondent Cooper's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: credible testimony of Respondent Cooper; documentary evidence including account opening statements, suitability statements and email between Respondent Cooper and Claimant.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

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

1. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2092339) from registration records maintained by the CRD for Respondent Michael Cooper (CRD Number 2716777) with the understanding that, pursuant to Notice to Members 04-16, Respondent Michael Cooper 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 12805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

Both Cooper and Claimant testified that no actual order to sell was given on March 2, 2020. Moreover, the documentary evidence supports this testimony. Furthermore, Cooper made reasonable suitable recommendations during the course of the account, including in March 2020. Based on Cooper’s testimony, which was not countered by Claimant, Cooper consistently recommended increasing fixed income, not getting cash out of the 401K and IRA accounts, but, instead, consider selling the second house in order to get cash. Cooper also recommended buying blue chip stocks.

Having been heavily in stocks, Claimant’s concern about the stock market during covid did not constitute a change in risk tolerance – it just showed a temporary panicked response. Cooper’s recommendation to hold the stocks at that point was reasonable and suitable, and, in fact, would have resulted in a better outcome.

The Panel reviewed and relied on documentary evidence including account opening statements, suitability statements, and email between Cooper and Claimant. All documents indicated that Claimant was a moderate to moderate/aggressive investor. Even in mid-March 2020, email showed that Claimant continued to want to buy stocks and gave Cooper some suggestions.

In sum, the evidence showed that Cooper did not in fact fail to execute Claimant’s order to sell but entered the order to sell when it was orally given at the end of March. The evidence also shows that Cooper knew his customer and gave reasonable recommendations to Claimant. Accordingly, the Panel found that Cooper did not violate any securities laws or regulations and that, therefore, this customer complaint should be expunged.

Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, and attorneys’ fees, are denied.

### **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	= \$ 1,575.00
Expungement Filing Fee	= \$ 1,575.00

*\*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 Ameriprise Financial Services, LLC is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

**Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

August 9, 2021, cancellation requested parties	WAIVED
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**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conferences: February 4, 2021	1 session

Seven (7) hearing sessions @ \$1,125.00/session	= \$ 7,875.00
Hearings:	
October 5, 2021	2 sessions
October 6, 2021	2 sessions
October 7, 2021	2 sessions
October 8, 2021	1 session

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Total Hearing Session Fees	= \$ 9,000.00
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The Panel has assessed \$4,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$4,500.00 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

Ellyn S. Roth	-	Public Arbitrator, Presiding Chairperson
Camille S. Cooper	-	Public Arbitrator
Charlane Brown	-	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.

**Concurring Arbitrators' Signatures**

***Ellyn S. Roth***

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Ellyn S. Roth  
Public Arbitrator, Presiding Chairperson

**10/21/2021**

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Signature Date

***Camille S. Cooper***

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Camille S. Cooper  
Public Arbitrator

**10/22/2021**

\_\_\_\_\_  
Signature Date

***Charlane Brown***

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Charlane Brown  
Public Arbitrator

**10/21/2021**

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Signature Date

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October 22, 2021

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