

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Clayton Kwok Shum

Case Number: 20-03470

vs.

Respondent
First Midwest Securities, Inc.

Hearing Site: San Francisco, California

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 Clayton Kwok Shum (“Claimant”): Harris Freedman, Esq., HLBS Law, Westminster, Colorado.

Respondent First Midwest Securities, Inc. (“Respondent”) did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: October 8, 2020.

Amended Statement of Claim filed on or about: December 22, 2020.

Claimant signed the Submission Agreement: October 8, 2020.

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

CASE SUMMARY

In the Statement of Claim and the Amended Statement of Claim, Claimant asserted a claim alleging that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository (“CRD”), is defamatory in nature.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Form U5 corresponding with Occurrence Number 1471392, and those relevant portions of the Form U4, from Claimant’s CRD records on the basis that

the statement is defamatory in nature, misleading, inaccurate, and/or erroneous, to include:

- a. amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary";
 - b. expungement of the Reason for Termination explanation on Claimant's CRD;
 - c. amendment of the answers to questions 7B, 7E(1)(c), 7F(1), and 7F(2) of Claimant's Form U5, from "Yes" responses to "No;" and
 - d. deletion of the Internal Review and Termination Disclosure Reporting Pages accompanying Occurrence Numbers 1471392 and 1299714;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
 3. Any other relief as the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimant withdrew the request for an amendment of the answer to question 7E(1)(c) from "Yes" to "No."

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

Respondent did not file a Statement of Answer or appear at the hearing. The Arbitrator determined that Respondent was served with the Claim Notification letter dated October 23, 2020 by regular mail and FedEx, as evidenced by the FedEx tracking information available online, and the Overdue Notice (including the Statement of Claim) dated December 15, 2020 by regular mail and FedEx, as evidenced by the tracking information available online. The Arbitrator also determined that Respondent was served with the Notification of Arbitrator dated January 13, 2021 by regular mail and FedEx, as evidenced by the tracking information available online.

The Claim Notification letter notified Respondent 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. Respondent failed to register for the DR Portal.

The Arbitrator determined that Respondent is, therefore, bound by the Arbitrator's ruling and determination.

The Arbitrator conducted a recorded, telephonic hearing on May 11, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

On June 11, 2021, Claimant filed a copy of the death record reflecting that the customer in Occurrence Numbers 1471392 and 1299714 (“Customer”) is deceased and therefore Claimant was unable to serve the Customer with the Statement of Claim and notice of the date and time of the expungement 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1471392 and 1299714, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s Statement of Claim; exhibits; death record of the Customer; and testimony provided at the expungement hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 the Reason for Termination and Termination Explanation in Section 3 of Clayton K. Shum’s (CRD Number 4412927) Form U5 filed by Respondent First Midwest Securities, Inc. on April 6, 2006 and maintained by the Central Registration Depository (“CRD”). The Reason for Termination shall be changed to “Voluntary” and the Termination Explanation should be deleted in its entirety and shall appear blank. This directive shall apply to all references to the Reason for Termination and Termination Explanation. The Arbitrator recommends expungement based on the defamatory nature of the information in Section 3 of Form U5. The above recommendations are made with the understanding that the registration records are not automatically amended. Clayton K. Shum must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure Department for review.
2. Separately, the Arbitrator recommends the expungement of all references to Occurrence Numbers 1471392 and 1299714 from registration records maintained by the CRD for Claimant Clayton K. Shum (CRD Number 4412927) with the understanding that, pursuant to Notice to Members 04-16, Claimant Clayton K. Shum must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive related to Occurrence Numbers 1471392 and 1299714.

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 relating to the recommendations in Paragraph 2 above:

The claim, allegation, or information is false.

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

In May 2003, the underlying client became a customer of Claimant. At that time, Claimant was registered with Northwestern Mutual Investment Services. Claimant stated that at that time, the Customer was in her late 80s, had over 30 years of investment experience, and a liquid net worth of over \$2 million.

Claimant also stated that the Customer had sufficient income and no natural heirs. Her goal was to grow her estate so that she could leave part of it to charity and part of it to a person she called her “God-Daughter.” This young woman was a paralegal who the Customer had met at church. The Customer was also, apparently, giving money to the God-Daughter on a regular basis.

Claimant stated that he developed and recommended a balanced, diversified portfolio, which consisted primarily of fixed-income and guaranteed investments, including stocks, bonds, annuities, life insurance, and real estate. Claimant stated that all investments were suitable to the Customer and were fully discussed with her and approved by her in advance.

In May 2004, Claimant registered with Respondent. In September 2006, Claimant stated that, using the authority he had as co-trustee of some of the funds, he ceased making payments to the God-Daughter, believing that she was misusing the funds and taking advantage of the Customer.

Claimant stated that he received a phone call from the God-Daughter requesting that she be named beneficiary of some of the investments in the Customer’s portfolio. He also stated that on September 26, 2006, the Customer filed a civil case alleging “conversion, negligent hiring, fraud, misappropriation [sic].” The Customer sought compensatory damages in the amount of \$1.5 million. On January 22, 2007, the civil case was stayed and referred to arbitration.

Claimant stated that, prior to the filing of the lawsuit, the Customer had never expressed any dissatisfaction to him in any way. Claimant believed that the Customer was under the influence of and being manipulated by the God-Daughter and that when Claimant had cut off the funds to the God-Daughter and refused her request to be named beneficiary, she had influenced the Customer to file this lawsuit.

On January 22, 2007, Claimant received a termination notice from Respondent. This led to the filing of a Form U5 by Respondent.

On January 29, 2008, Respondent settled with the Customer. Claimant did not participate in the settlement.

Claimant stated that Respondent did not conduct an investigation into the Customer's allegations, did not give him an opportunity to explain the facts of the situation, and terminated him without explanation.

Claimant further stated that, as a result of the filing of the Form U5, both the Certified Financial Planners Board and the National Association of Securities Dealers (now FINRA) investigated and neither took any action.

Respondent was served with notice of this matter at its last known address. However, no response was ever received, and Respondent appears to no longer exist. Neither Respondent nor any representatives of Respondent testified at the hearing or participated in any way.

Claimant submitted evidence that the Customer is deceased. Therefore, she was not served with notice of this matter and neither the Customer nor any representative of the Customer testified at the hearing or participated in any way.

Claimant gave cogent and credible testimony that all of the investments he made for the Customer were suitable, that her portfolio was balanced, that her investments were quite profitable, that the Customer was fully informed of and agreed to every investment, and that, in general, he did nothing improper in any way in regard to this matter.

As such, the Arbitrator believes that the allegations are false. It does not serve the public interest for these entries to remain on Claimant's CRD and the Arbitrator recommends granting his request for expungement.

3. Any and all claims for relief not specifically addressed herein 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	= \$	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 event giving rise to the dispute. 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: February 9, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: May 11, 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

Philip Aaron Tymon

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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

Philip Aaron Tymon

Philip Aaron Tymon
Sole Public Arbitrator

07/09/2021

Signature Date

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July 09, 2021

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