

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Russell Curtis McLean

Case Number: 20-03475

vs.

Respondent
Securian Financial Services, Inc.

Hearing Site: Portland, Oregon

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 Russell Curtis McLean (“Claimant”): Zachary Morris, Esq. and Benjamin Winograd, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Securian Financial Services, Inc. (“Respondent”): Richard J. Babnick Jr., Esq., Sichenzia Ross Ference LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 8, 2020.
Claimant signed the Submission Agreement: October 8, 2020.

Statement of Answer filed by Respondent on or about: November 9, 2020.
Respondent signed the Submission Agreement: November 6, 2020.

CASE SUMMARY

In the Statement of, 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.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and did not oppose Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Form U5 disclosure corresponding with Occurrence Numbers 852749 and 362351, 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. expungement of the Reason for Termination explanation on Claimant's CRD;
 - b. amendment of any "Yes" answers to on Claimant's Form U5 associated with Occurrence Numbers 852749 and 362351, from "Yes" responses to "No"; and
 - c. deletion of the Internal Review and Termination Disclosure Reporting Pages accompanying Occurrence Numbers 852749 and 362351;
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 Statement of Answer, Respondent requested any monetary damages demanded by Claimant be denied.

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.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

FINDINGS

All information related to Occurrence Numbers 852749 and 362351 is recommended for expungement from Claimant's Form U5. It is clear that the allegations in this case were entirely erroneous and unfounded. It is undisputed that Claimant was not involved with any improper commission sharing during his employment with Ascend Financial Services Inc. The allegations are per se defamatory and must be removed from Claimant's CRD records because the allegations have no basis in fact. Expungement poses no danger to the investing public or to any potential employer. Rather, this remedy corrects a grave injustice that occurred as a result of sloppy investigatory processes and a failure to conduct basic due diligence

AWARD

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:

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers 852749 and 362351 maintained by the CRD for Russell Curtis McLean (CRD Number 2852098). Any "Yes" answers should be changed to "No," as applicable.

The Arbitrator recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. Russell Curtis McLean must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure Department for review.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Arbitrator has assessed the total discovery-related motion fees to Claimant.

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(s), including a pre-hearing conference with the Arbitrator(s), 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 26, 2021 1 session
May 3, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: September 9, 2021 1 session

Total Hearing Session Fees	= \$	150.00
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The Arbitrator has assessed the total hearing session fees to Claimant.

ARBITRATOR

Peter Khalil

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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

Peter Khalil

Peter Khalil
Sole Public Arbitrator

09/24/2021

Signature Date

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September 24, 2021

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