

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Shawn Anthony Maloney

Case Number: 20-03890

vs.

Respondent

Commonwealth Financial Network

Hearing Site: Albany, New York

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.

REPRESENTATION OF PARTIES

For Claimant Shawn Anthony Maloney: Tosh D. Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent Commonwealth Financial Network: Joe Tully, Commonwealth Financial Network, Waltham, Massachusetts.

CASE INFORMATION

Second Amended Statement of Claim filed on or about: January 14, 2021.

Shawn Anthony Maloney signed the Submission Agreement: November 23, 2020.

Respondent did not file a Statement of Answer.

Commonwealth Financial Network signed the Submission Agreement: January 27, 2021.

CASE SUMMARY

In the Second Amended Statement of Claim, Claimant asserted a claim seeking expungement of Form U5 termination entry based on the defamatory nature of the entry in Claimant's Central Registration Depository ("CRD") records.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of the Form U5 Termination Disclosure found under Occurrence Number 1738354 of Claimant's CRD record, pursuant to a finding that the claims, allegations, and information are false, pursuant to FINRA Rule 2080(b)(1)(C), and that the public disclosure is defamatory to Claimant; and compensatory damages in the amount of \$1.00.

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 original Statement of Claim was filed on November 24, 2020. An Amended Statement of Claim was filed on January 11, 2021 and a Second Amended Statement of Claim was filed on January 14, 2021. The Statement of Claim filed on November 24, 2020, and the Amended Statement of Claim filed on January 11, 2021 were not served on the Respondent and therefore were not considered by the Arbitrator.

Respondent Commonwealth Financial Network did not file a Statement of Answer. The Arbitrator determined that Respondent Commonwealth Financial Network was served with the Claim Notification letter dated January 19, 2021 by regular mail, and the Overdue Notice (including the Statement of Claim) dated March 12, 2021 by regular and certified mail, as evidenced by the signed signature card on file. The Arbitrator also determined that Respondent Commonwealth Financial Network was served with the Notification of Arbitrator dated April 6, 2021 by regular mail.

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

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

Respondent Commonwealth Financial Network did not appear at the expungement hearing. Upon review of the file, the Arbitrator determined that Respondent Commonwealth Financial Network received due notice of the hearing and that arbitration of the matter would proceed without Respondent Commonwealth Financial Network present, in accordance with the Code.

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 Termination Explanation in Section 3 of Shawn Anthony Maloney’s (CRD Number 6148072) Form U5 filed by Goldman Sachs & Co. LLC (CRD Number 361) on December 19, 2014 and maintained by the Central Registration Depository (“CRD”). The Reason for Termination shall remain the same. The Termination Explanation shall be replaced with the following language:

“Representative (and Representative’s attorney) and the Broker/Dealer interpreted a disclosure question differently. The Broker/Dealer severed the employment relationship nonetheless.”

This directive shall apply to all references to the Termination Explanation.

The Arbitrator further recommends the expungement of all references to Occurrence Number 1738354 from the registration records maintained by the CRD for Shawn Anthony Maloney. 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. Shawn Anthony Maloney must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure Department for review.

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 events giving rise to the dispute. Accordingly, as a party, Respondent Commonwealth Financial Network 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: May 7, 2021	1 session	

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

Josian Antoine

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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

Josian Antoine

Josian Antoine
Sole Public Arbitrator

12/20/2021

Signature Date

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December 22, 2021

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