

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Steven Scott LaPorta

Case Number: 20-04091

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Chicago, Illinois

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 Steven Scott LaPorta (“Claimant”): Brian Luther, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Respondent”): Kathryn D. Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: December 16, 2020.
Claimant signed the Submission Agreement: December 16, 2020.

Statement of Answer filed on or about: January 28, 2021.
Respondent signed the Submission Agreement: January 28, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 966916 and 1025107.

In the Statement of Answer, Respondent opposed any request for compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 15, 2021, Claimant filed an obituary for one of the customers in Occurrence Number 1025107. Claimant also advised that the surviving customer in Occurrence Number 1025107 (“Customer A”) and the customer in Occurrence Number 966916 (collectively, “Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notices”). On May 16, 2021, Claimant also filed a copy of the USPS tracking information available online for the Notices.

On May 20, 2021, Customer A submitted a Declaration objecting to Claimant’s request for expungement. On June 4, 2021, Claimant filed a response to Customer A’s Declaration.

The Arbitrator conducted a recorded, telephonic hearing on June 28, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and that there would be a 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 occurrences in the CRD.

The Arbitrator noted that the disputes related to Occurrence Numbers 966916 and 1025107 were not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim, Customer A’s Declaration, Claimant’s response to Customer A’s Declaration, and Claimant’s testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 966916 and 1025107 from registration records maintained by the CRD for Claimant Steven Scott LaPorta (CRD Number 2371154) with the understanding that, pursuant to Notice to Members 04-16, Claimant Steven Scott LaPorta 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 13805 of the Code of Arbitration Procedure (“Code”), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

In regards to Occurrence Number 966916, the customer acknowledged approving the trade but then said she was never told the number of shares or the price. Claimant testified that there is no instance in which he could have made a trade in the customer’s nondiscretionary account without her approval, including the size of the transaction and the price. Moreover, he had a long relationship with her, and other family members, and she held several positions of 1000 shares or more. The size of the transaction was not unusual. In addition, the customer received a confirmation for the transaction without complaint.

In regards to Occurrence Number 1025107, based on both the testimony of Claimant and the respective letters submitted by him and Customer A, I concluded that Customer A was an experienced investor. No facts were presented that supported the notion that he was improperly invested in technology stocks or overconcentrated in technology stocks. This was a non-discretionary account, and the evidence made clear that Customer A made his own trading decisions. Claimant testified that all of the positions were in a “Buy” according to Respondent’s research. Further, Customer A’s complaint email said that he could not believe that the Respondent’s analysts did not see the tech crash coming, which made clear to me that his concern was that he lost money, not that the tech investments were unsuitable.

FEES

Pursuant to the 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

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

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:

One (1) pre-hearing session @ \$1,125.00/session		= \$	1,125.00
Pre-Hearing Conference: April 1, 2021	1 session		
One (1) hearing session on expungement request @ \$1,125.00/session		= \$	1,125.00
Hearing: June 28, 2021	1 session		
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Total Hearing Session Fees		= \$	2,250.00

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

James J. Stamos

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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

James J. Stamos

James J. Stamos
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)