

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Shelby Gregory Fink

Case Number: 20-04121

vs.

Respondent
Ameriprise Financial Services, Inc.

Hearing Site: Louisville, Kentucky

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 Shelby Gregory Fink (“Claimant”): Frances Menzer, Esq. and Dochter Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Ameriprise Financial Services, Inc., Ameriprise Financial Services, LLC appeared as the real party in interest (“Respondent”): Howard M. Klausmeier, Esq., Ameriprise Financial Services, LLC, Troy, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 2020.
Claimant signed the Submission Agreement: December 18, 2020.

Statement of Answer filed on or about: February 8, 2021.
Respondent signed the Submission Agreement: February 8, 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 supported Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1094460, 1137193, 1149065, 1284769, and 1361422; compensatory damages in the amount of \$1.00;

and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that an award be issued that recommends expungement and that any and all relief requested against it 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.

On February 11, 2021, the parties filed a Joint Agreement to Reduce Panel Pursuant to Rule 13401(c) of the Code of Arbitration Procedure ("Code"). Accordingly, a single arbitrator was appointed in this matter.

On June 24, 2021, Claimant advised that the customers in Occurrence Numbers 1137193, 1284769, and 1361422 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). Claimant filed a Death Record and Obituary for the customer in Occurrence Number 1094460. Claimant filed an Affidavit documenting all efforts made to locate the customer in Occurrence Number 1149065. On June 28, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notice. On August 17, 2021, Claimant filed the USPS tracking information and signed green cards for the Notice sent via certified mail to the Customers.

The Arbitrator conducted a recorded, telephonic hearing on October 11, 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, supported 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 hearing and that Claimant made a good faith search to locate the customer in Occurrence Number 1149065.

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.

On August 27, 2021, the parties filed correspondence advising that, despite a good faith search, neither party was able to produce the settlement agreement for Occurrence Number 1149065. The Arbitrator noted that, despite a good faith search, the settlement document could not be located. The Arbitrator relied on Claimant's testimony and information in Claimant's BrokerCheck® Report when he 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.

The Arbitrator noted that the disputes related to Occurrence Numbers 1094460, 1137193, 1284769, and 1361422 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and Claimant's BrokerCheck® Report.

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:

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1094460, 1137193, 1149065, 1284769, and 1361422 from registration records maintained by the CRD for Claimant Shelby Gregory Fink (CRD Number 2769146) with the understanding that, pursuant to Notice to Members 04-16, Claimant Shelby Gregory Fink 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, 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:

Claimant testified credibly as to each occurrence number that the customers had been fully apprised of the nature and risks of the investments and testified credibly, as well, that she remained available to the customers. Although Claimant maintains that expungement should be permitted both because the claim, allegation or information was false and because the claim, allegation or information was factually impossible or clearly erroneous, the finding is limited in this case to a determination that the claims were erroneous. The losses experienced by the customers resulted from sustained depressed market conditions, not disregard or impropriety on the part of Claimant.

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

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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

September 22, 2021, postponement requested by Claimant = \$ 1,125.00

Total Postponement Fees = \$ 1,125.00

The Arbitrator has assessed the total postponement 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, 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 13, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: October 11, 2021 1 session

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

Richard W. Dissen

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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

Richard W. Dissen

Richard W. Dissen
Sole Public Arbitrator

10/20/2021

Signature Date

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October 20, 2021

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