

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jeffrey P. Elman

Case Number: 20-04128

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Cleveland, Ohio

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Jeffrey P. Elman: Brandon M. Taaffe, Esq., Shumaker Loop & Kendrick, LLP, Sarasota, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: Edward J. Heffernan, Esq., Rubin, Fortunato, & Harbison, P.C., Paoli, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 2020.

Jeffrey P. Elman signed the Submission Agreement: December 18, 2020.

Statement of Answer filed by Respondent on or about: February 9, 2021.

Amended Statement of Answer filed by Respondent on or about: March 8, 2021.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: March 12, 2021.

CASE SUMMARY

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

In the Statement of Answer, as amended, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of the November 12, 2019 Voluntary Resignation event under Occurrence Number 2054037 and of the Customer Complaint under Occurrence Number 2071048 from his CRD records.

In the Statement of Answer, as amended, Respondent requested: denial of Claimant's request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about May 19, 2021, Claimant advised that the customer in Occurrence Number 2071048 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about May 20, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with proof of service via Federal Express upon the underlying Customer confirming that the Customer was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on June 9, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and opposed the request for expungement.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer had notice of the expungement request and 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 also reviewed the settlement documentation related to Occurrence Number 2071048, 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.

On or about June 11, 2021, the parties filed with FINRA Dispute Resolution Services a post-hearing submission.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's exhibits presented at the hearing 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:

1. The Arbitrator recommends the expungement of all references to Occurrence Number 2071048 from registration records maintained by the CRD for Claimant Jeffrey Philip Elman (CRD Number 1570914) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jeffrey Philip Elman 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 findings of fact:

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

The claim, allegation, or information is false.

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

The customer complaint related to a family dispute regarding control of the Customer’s assets by her adult children. Despite the complaint by the Customer’s adult daughter, there was no evidence that Claimant acted inappropriately or in any manner that would justify the complaint.

The Arbitrator recommends the expungement of all references to Occurrence Numbers 2054036 and 2054037 from the registration records maintained by the CRD for Claimant Jeffrey P. Elman. Any “Yes” answers should be changed to “No” as applicable. The Arbitrator recommends expungement based on the defamatory nature of the information. The registration records are not automatically amended to include the changes indicated above. Claimant Jeffrey P. Elman must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure (“CRED”) Department for review.

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
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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(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 with a single Arbitrator @ \$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: June 9, 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

Michael L. Fortney

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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

Michael L. Fortney

Michael L. Fortney
Sole Public Arbitrator

07/07/2021

Signature Date

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July 07, 2021

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