

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Theodore William McDonagh
Christopher William McDonagh
Daniel Stephen Bauers

Case Number: 20-04155

vs.

Respondent

Raymond James & Associates, Inc.

Hearing Site: New York, 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 Persons vs. Member

REPRESENTATION OF PARTIES

For Claimants Theodore William McDonagh, Christopher William McDonagh, and Daniel Stephen Bauers: Bruce W. Barnes, Esq., Bruce W. Barnes, P.A., Safety Harbor, Florida.

For Respondent Raymond James & Associates, Inc.: Robert M. Rudnicki, Esq., Raymond James & Associates, Inc., St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed on or about: December 23, 2020.

Theodore William McDonagh signed the Submission Agreement: December 21, 2020.

Christopher William McDonagh signed the Submission Agreement: January 4, 2021.

Daniel Stephen Bauers signed the Submission Agreement: December 21, 2020.

Statement of Answer filed by Respondent on or about: January 27, 2021.

Raymond James & Associates, Inc. signed the Submission Agreement: January 27, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants 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 did not oppose Claimants’ expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: expungement of Occurrence Numbers 2047476, 2047477, and 2047480.

In the Statement of Answer, Respondent requested that all fees be assessed to Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 12, 2021, the parties agreed to proceed with a single Arbitrator for this matter.

On May 11, 2021, Claimant advised that the customer in Occurrence Numbers 2047476, 2047477, and 2047480 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on August 4, 2021, so the parties could present oral argument and evidence on Claimants’ request for expungement.

Respondent did not participate in the expungement hearing and did not oppose the request for expungement.

The Customer also did not participate in the expungement hearing and did not oppose the expungement request. The Arbitrator found that the Customer had notice of the expungement request and hearing.

The Arbitrator reviewed Claimants’ BrokerCheck® Reports. 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 dispute related to Occurrence Numbers 2047476, 2047477, and 2047480 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the letter of dismissal of the Customer’s claim to FINRA and Claimants’ testimonies.

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 2047476 from registration records maintained by the CRD for Claimant Theodore William McDonagh (CRD Number 2668934) with the understanding that, pursuant to Notice to Members 04-16, Claimant Theodore William McDonagh 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; and the claim, allegation, or information is false.

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

All trades were directed by the Customer, Claimant Theodore William McDonagh had no discretionary authority. Further, the Customer asked for a margin account and Theodore William McDonagh made sure it was a small amount of margin.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 2047477 from registration records maintained by the CRD for Claimant Christopher William McDonagh (CRD Number 1704230) with the understanding that, pursuant to Notice to Members 04-16, Claimant Christopher William McDonagh 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Christopher William McDonagh was not involved in any advice or trade for the Customer.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 2047480 from registration records maintained by the CRD for Claimant Daniel Stephen Bauers (CRD Number 5458897) with the understanding that, pursuant to Notice to Members 04-16, Claimant Daniel Stephen Bauers 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Daniel Stephen Bauers was not even in the financial industry when the purported inappropriate purchases occurred. He started in the industry in 2007, after the alleged bad advice on the trade.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Expungement 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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Raymond James & Associates, Inc. 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 29, 2021	1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: August 4, 2021	1 session	

Total Hearing Session Fees	= \$	2,250.00
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The Arbitrator has assessed the total hearing session fees jointly and severally to Claimants.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Richard W. Cutler

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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

Richard W. Cutler

Richard W. Cutler
Sole Public Arbitrator

08/17/2021

Signature Date

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.

August 18, 2021

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