

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Glen Allen Simmonds

Case Number: 20-04159

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Boca Raton, Florida

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 partially by videoconference.

REPRESENTATION OF PARTIES

For Claimant Glen Allen Simmonds: Craig D. Stein, Esq., Stein & Stein, P.A., Palm Beach, Florida.

For Respondent Wells Fargo Clearing Services, LLC: Patricia E. Cowart, Esq., Wells Fargo Legal Department, Fort Lauderdale, Florida.

CASE INFORMATION

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

Glen Allen Simmonds signed the Submission Agreement: December 23, 2020.

Statement of Answer filed by Respondent on or about: February 11, 2021.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: February 11, 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 did not oppose Claimant’s request for expungement and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested that his good name and reputation be restored and that the Panel make a finding that Occurrence Number 2063858 should be expunged from his CRD records.

In the Statement of Answer, Respondent did not delineate a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On May 18, 2021, Claimant advised that the customer in Occurrence Number 2063858 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On October 5, 2021, the Panel conducted a recorded hearing mostly in-person, but with Respondent and one witness appearing via videoconference, 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, did not oppose the request for expungement.

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

The Panel reviewed Claimant’s BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel noted that the dispute related to Occurrence Number 2063858 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: email between Respondent and the Customer’s attorney, as well as the testimony of the witnesses.

AWARD

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

1. The Panel recommends the expungement of all references to Occurrence Number 2063858 from registration records maintained by the CRD for Claimant Glen Allen Simmonds (CRD Number 4794821) with the understanding that, pursuant to Notice to Members 04-16, Claimant Glen Allen Simmonds 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 Panel has made the following Rule 2080 affirmative findings of fact:

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

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

The Panel found Claimant, Claimant’s supervisor, and Respondent’s representative to be credible witnesses. In the underlying claim, the Customer asserted that Claimant was responsible for depositing funds into just one account. About a month after the deposit was made, the Customer’s estate planning attorney advised Respondent that a portion of the deposit should be deposited into another account. At the Customer’s direction, the holdings were liquidated in order to transfer the requested amount of the original deposit into the second account. The Panel found that Claimant was not involved with the deposit. Furthermore, the Panel found that the instruction to deposit the funds into two accounts was not given at the time of deposit and the Customer was given a receipt reflecting the funds being deposited into one account. The second claim that was made, suggested that the capital gain tax that the Customer was subjected to, as a result of liquidating a portion of the deposit, in order to deposit the funds into the second account, was Claimant’s responsibility. The Panel found no merit to that claim. Claimant never gave tax advice and was not involved with the liquidation. Claimant is not a tax expert and the Customer, in fact, had a Certified Public Accountant and an estate planning attorney advising the Customer.

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

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: April 19, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: October 5, 2021	1 session	
Total Hearing Session Fees	= \$	2,250.00

The Panel has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Paul J. Burkhart	-	Public Arbitrator, Presiding Chairperson
Michael P. Schiff	-	Public Arbitrator
James Michael LaBonte	-	Non-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.

Concurring Arbitrators' Signatures

Paul J. Burkhart

Paul J. Burkhart
Public Arbitrator, Presiding Chairperson

10/14/2021

Signature Date

Michael P. Schiff

Michael P. Schiff
Public Arbitrator

10/14/2021

Signature Date

James Michael LaBonte

James Michael LaBonte
Non-Public Arbitrator

10/13/2021

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.

October 15, 2021

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