

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Alex B. Shore

Case Number: 20-04205

vs.

Respondent
Wells Fargo Advisors Financial Network

Hearing Site: Nashville, Tennessee

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 Alex B. Shore: Zack Knobloch, Esq. and Benjamin J. Biard, Esq., Winget, Spadafora & Schwartzberg, LLP, Miami, Florida.

For Respondent Wells Fargo Advisors Financial Network: Deirdre Wolff, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: December 29, 2020.
Alex B. Shore signed the Submission Agreement: December 29, 2020.

Statement of Answer filed by Respondent on or about: March 22, 2021.
Wells Fargo Advisors Financial Network signed the Submission Agreement: February 18, 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 asserted that: Claimant’s Statement of Claim made no allegation of wrongdoing against Respondent and stated no basis for claims against Respondent; Respondent was not involved with the U4 filing; none of the records relevant in this case were created, obtained or reviewed by Respondent; and it does not support, but also has no objection, to Claimant’s request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1042038; compensatory damages in the amount of \$1.00; and any just and further relief that the Arbitrator deems just.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for Respondent to pay monetary damages or any portion of Claimant's relief, including any allocation of costs or expenses associated with this arbitration proceeding.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 9, 2021, Claimant's counsel advised that the customer in Occurrence Number 1042038 ("Customer") was served via United States Postal Service ("USPS") certified mail to the Customer's last known address with the Statement of Claim and notice of the date and time of the expungement hearing. According to a USPS tracking report, delivery of the notice was made to an individual at the Customer's address on June 14, 2021, but Claimant's counsel had not received a copy of the signed return receipt.

The Panel conducted a recorded hearing by videoconference on July 27, 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, 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 there was a settlement between Claimant's former employer and the Customer, but Claimant was not involved in the decision to settle the Customer's complaint nor did he contribute to any settlement amounts. Claimant's former employer made a business decision to avoid the cost and uncertainty of protracted litigation. The Customer accepted approximately 10% of the alleged damages. Since the "settlement" referred to occurred more than 20 years before the hearing and involved a company that was no longer in business, there were no settlement documents which described the terms of the settlement available for the Panel to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings and testimony of Claimant; lack of testimony from the Customer; and Claimant's exhibit numbers 1, 2, and 3.

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 1042038 from registration records maintained by the CRD for Claimant Alex B. Shore (CRD Number 2431627) with the understanding that, pursuant to Notice to Members 04-16, Claimant Alex B. Shore 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 claim, allegation, or information is false.

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

There was no evidence submitted by Respondent nor the Customer to refute the credible sworn testimony and the admitted exhibits of Claimant. The undisputed evidence shows that Claimant had numerous contacts with the Customer. Claimant thoroughly explained the risks and rewards of the investments, but the Customer chose to ignore his recommendations and sought to make risky and speculative choices. At all times the Customer was actively involved and knowledgeable about her account, her investments, and Claimant’s strategy and recommendations.

According to a Personal Profile, the Customer had a primary investment objective of speculation with a risk tolerance of “moderately aggressive.” That objective was never changed by the Customer. In 2001 the market began a decline and Claimant’s Branch Manager made an “active account” call to the Customer to discuss her account activity. During that call, the Customer confirmed that she was aware of the account activity and that she sought speculation and growth from her account with a moderately aggressive risk tolerance.

Claimant thoroughly explained risks and rewards of the Customer’s strategy to her. Nevertheless, the Customer knowingly elected to continue her strategy and accepted the risks of the same. The Customer’s investment objectives and strategies did not change until the market began to experience a decline that affected her account value. The Customer did not make a complaint until after her account continued to experience losses due to market forces and her refusal to take steps to limit risks.

Although the Customer was duly notified of the hearing, she did not appear and refute any of the credible sworn testimony 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:

Expungement 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 with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: April 26, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: July 27, 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

A.J. Seier	-	Public Arbitrator, Presiding Chairperson
James A. McIntosh	-	Public Arbitrator
Joseph Charles Smolira	-	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

A.J. Seier

A.J. Seier
Public Arbitrator, Presiding Chairperson

08/02/2021

Signature Date

James A. McIntosh

James A. McIntosh
Public Arbitrator

08/02/2021

Signature Date

Joseph Charles Smolira

Joseph Charles Smolira
Non-Public Arbitrator

08/03/2021

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 03, 2021

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