

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Anthony Jose Calderon

Case Number: 21-00025

vs.

Respondent
Charles Schwab & Co., Inc.

Hearing Site: Phoenix, Arizona

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 Anthony Jose Calderon (“Claimant”): Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent Charles Schwab & Co., Inc. (“Respondent”): Garrett R. Wynne, Esq., Charles Schwab & Co., Inc., Lone Tree, Colorado.

CASE INFORMATION

Statement of Claim filed on or about: January 6, 2021.
Claimant signed the Submission Agreement: January 6, 2021.

Statement of Answer filed by Respondent on or about: January 11, 2021.
Respondent signed the Submission Agreement: January 9, 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 expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2014496 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
 - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
 - c. the claim, allegation, or information is false; and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent requested compensatory damages in the amount of \$1.00 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 June 2, 2021, Claimant advised that the customer in Occurrence Number 2014496 ("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 June 22, 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. Respondent's counsel stated that the Customer verbally informed him that he will not participate in the expungement hearing and does not oppose Claimant's expungement request. 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 occurrence in the CRD.

Although the customer complaint is reflected on Claimants' BrokerCheck® Report as "settled," the Arbitrator noted that Respondent reversed the disputed trade to make the Customer whole, that the Customer did not lose any money and that there were no settlement documents to review. The Arbitrator also noted that Claimant did not contribute toward the trade reversal.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; Claimant's exhibits; Claimants' BrokerCheck® Reports; Claimant's testimony; and the Customer's statement of non-opposition.

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 2014496 from registration records maintained by the CRD for Claimant Anthony Jose Calderon (CRD Number 6794612) with the understanding that, pursuant to Notice to Members 04-16, Claimant Anthony Jose Calderon 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:

The complaint was filed by the Customer with a self-directed account involving the tax implications from a “wash sale.” The Customer placed a call into Respondent’s customer service desk and the call was assigned to Claimant, an inexperienced representative. The Customer advised that he had recently closed out a short option contract position at a loss and he wanted to know when he could reopen the position to avoid the wash sale rule and, thereby, take the tax deduction. Claimant, who was new to the industry with limited training and understanding of the wash sale rule, inadvertently advised the Customer that he could reopen the position 30 days after the trade date on which he closed the short option position. Unbeknownst to Claimant, the 30-day window was calculated from the settlement date rather than the trade date, which amounted to a difference of one day. The Customer reopened the position 30 days from the trade date, thereby triggering the wash sale rule and causing him to void the tax deduction. This resulted in monetary damages.

The matter was reported on Claimant’s U4, Question 14I(2)(b) as a complaint involving a “sales practice violation.” However, Claimant’s error in providing the trade date rather than the settlement date was not an “investment-related sales practice violation” in the traditional sense, such as fraud, unauthorized trading, churning, misrepresentation, etc. Claimant’s error involving a one-off transaction was more administrative and operational in nature, i.e., an honest mistake, and which was rectified by his firm. Neither FINRA, nor any other self-regulatory organization and nor his firm, took any disciplinary action against Claimant. Simply put, there was no malicious intent to wrong the Customer and Claimant did not benefit in any way.

The complaint filed by the Customer, is the only blemish on Claimant's record. Honest mistakes do happen. This one error should not follow Claimant throughout his career, and its expungement would have no material adverse effect on investor protection. It serves no public interest to have this blemish remain on Claimant's record. Respondent did not oppose the expungement and the Customer indicated just prior to this hearing that he has no wish to oppose the expungement.

FINRA Rule 2080(b)(2)(A) and 2080(b)(2)(B) provide that expungement is appropriate under extraordinary circumstances if:

(A) the expungement relief and accompanying findings on which it is based are meritorious; and

(B) the expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

This is one of those occasions. Claimant inadvertently and with no malicious intent gave the Customer an incorrect date for reopening a position which resulted in monetary damages, and his firm reversed the trade in question and reimbursed the Customer for loss. In this instance, the error by Claimant was neither a "sales practice violation", nor improper "investment-related advice", nor was Claimant "involved" in anything other than an erroneously mis-stated date.

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 @ \$450.00/session	= \$	1,125.00
Pre-Hearing Conference: April 20, 2021		1 session
One (1) hearing session on expungement request @ \$450.00/session	= \$	1,125.00
Hearing: June 22, 2021		1 session
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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

Robert E. Jenks

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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

Robert E. Jenks

Robert E. Jenks
Sole Public Arbitrator

06/23/2021

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.

June 24, 2021

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