

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard Frederick Swider

Case Number: 21-00039

vs.

Respondent
M Holdings Securities, Inc.

Hearing Site: Milwaukee, Wisconsin

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 Richard Frederick Swider (“Claimant”): Harris Freedman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent M Holdings Securities, Inc. (“Respondent”): Stephanie Palomino, Esq., M Holdings Securities, Inc., Portland, Oregon.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2021.
Claimant signed the Submission Agreement: January 7, 2021.

Statement of Answer filed on or about: March 5, 2021.
Respondent signed the Submission Agreement: February 19, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1039190, 1671593, and 1741302 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that any request by Claimant for compensatory damages be denied and that all forum costs and fees be assessed against Claimant.

At the hearing, Claimant withdrew all claims except for the expungement request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 19, 2021, Claimant advised that the parties agreed to proceed with a single arbitrator

On May 10, 2021, Claimant advised that the customers in Occurrence Numbers 1039190, 1671593, and 1741302 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notices”). On May 17, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed a copy of the FedEx tracking information available for the Notices.

The Arbitrator conducted recorded, telephonic hearings on June 30 and July 1, 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, took no position on the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 Numbers 1039190, 1671593, and 1741302, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request. The Arbitrator also noted that Claimant paid the entire settlement amount in Occurrence Number 1039190 and contributed to the settlement amount in Occurrence Number 1671593 but did not contribute to the settlement amount in Occurrence Number 1741302.

In recommending expungement of Occurrence Numbers 1671593 and 1741302, the Arbitrator relied upon the following documentary or other evidence: Claimant’s Exhibits 5-6, 9, and 12-13.

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. Claimant's request for expungement of Occurrence Number 1039190 from his registration records maintained by the CRD is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1671593 and 1741302 from registration records maintained by the CRD for Claimant Richard Frederick Swider (CRD Number 842878) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Frederick Swider 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 claim, allegation, or information is false.

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

Claimant did not make any unsuitable recommendation. The investments had low volatility, and both customers were sophisticated investors with a high net worth. Their risk profiles indicated that a more aggressive approach was appropriate. Claimant met with the customers on a regular basis, and they agreed to the hedge fund investments. In addition, the hedge fund failed because a portion of the assets were involved in a fraudulent scheme perpetrated by a third-party investment advisory firm. No representative at the time could have anticipated that type of fraud.

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 @ \$1,125.00/session		= \$	1,125.00
Pre-Hearing Conference: April 7, 2021	1 session		
Three (3) hearing sessions on expungement request @ \$1,125.00/session		= \$	3,375.00
Hearings: June 30, 2021	2 sessions		
July 1, 2021	1 session		
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Total Hearing Session Fees		= \$	4,500.00

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

Leon Fox

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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

Leon Fox

Leon Fox
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)