

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Howard Evan Sharfman

Case Number: 21-00040

vs.

Respondent

Estate of Thomas E. O'Rourke

Hearing Site: Chicago, Illinois

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. Customer

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Howard Evan Sharfman (“Claimant”): Richard M. Goldwasser, Esq., Schoenberg Finkel Beederman Bell Glazer LLC, Chicago, Illinois.

Respondent Estate of Thomas E. O'Rourke (“Respondent”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2021.

Claimant signed the Submission Agreement: January 5, 2021.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 719322, compensatory damages in the amount of \$1.00, and any and all other relief that the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 15, 2021, Claimant filed an Agreement to Arbitrate and Consent to Expungement (“Agreement”) which was signed by the parties.

On June 4, 2021, Claimant advised that a representative for the estate of the customer in Occurrence Number 719322 (“Customer”), was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded hearing by videoconference on June 24, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing. The Panel found that Respondent 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 considered the amount of payment made to any party to the settlement related to Occurrence Number 719322. Claimant testified that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant contributed to the settlement amount. The Panel noted that Claimant was unable to obtain copies of documents from the court where the underlying litigation was filed or a copy of the settlement documentation from Respondent. The Panel found Claimant’s efforts to obtain copies to be reasonable.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim; the Agreement; and Claimant’s testimony, BrokerCheck® Report, and Exhibit 1.

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. Claimant’s claim for \$1.00 in compensatory damages is denied.
2. The Panel recommends the expungement of all references to Occurrence Number 719322 from registration records maintained by the CRD for Claimant Howard Evan Sharfman (CRD Number 1753378) with the understanding that, pursuant to Notice to Members 04-16, Claimant Howard Evan Sharfman 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; and

The claim, allegation, or information is false.

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

Claimant’s uncontroverted testimony was that the Customer was a client of another financial advisor (“G.P.”), who was a Senior Account Executive. Because G.P. was about to retire, he asked Claimant to assist in the future handling of the Customer’s transactions. Claimant arranged a 1035 exchange of the Customer’s annuity for another annuity. The new annuity had a number of investment options that were not available with the original annuity. Claimant spoke to the Customer only once on the phone. G.P. arranged for the Customer to sign the requisite documents. There was nothing improper or unsuitable with the new annuity or the transaction. Apparently, the Customer became unhappy with having invested in an annuity. The Customer died shortly after the underlying court case was filed, and the case was settled. Claimant disputed the allegations made against him, denied any wrongdoing, and settled the case to avoid the costs of litigation.

3. 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, Vestax Securities Corporation 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, 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: May 18, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: June 24, 2021	1 session	
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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

Theodore W. Wrobleski	-	Public Arbitrator, Presiding Chairperson
Marcia Bonita Gevers	-	Public Arbitrator
Dennis Christensen	-	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

Theodore W. Wrobleski

Theodore W. Wrobleski
Public Arbitrator, Presiding Chairperson

06/30/2021

Signature Date

Marcia Bonita Gevers

Marcia Bonita Gevers
Public Arbitrator

07/01/2021

Signature Date

Dennis Christensen

Dennis Christensen
Non-Public Arbitrator

07/01/2021

Signature Date

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July 01, 2021

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