

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kristopher Forest Etter

Case Number: 21-00348

vs.

Respondent
IMS Securities, Inc.

Hearing Site: Dallas, Texas

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 Kristopher Forest Etter (“Claimant”): Erika Binnix, Esq. and Dochter Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

Respondent IMS Securities, Inc. (“Respondent”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: February 9, 2021.

Claimant signed the Submission Agreement: February 8, 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 1928414 and any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

On April 2, 2021, Claimant filed a Motion to Bar Defenses Due to Untimely Answer (“Motion to Bar”) pursuant to Rule 13308 of the Code. No response was filed.

On April 6, 2021, Claimant filed an unopposed request to proceed with a single arbitrator pursuant to Rule 13401(c) of the Code. In an Order dated June 11, 2021, the Panel granted the Motion to Bar and Claimant’s request to proceed with a single arbitrator. Accordingly, the Chairperson became the sole arbitrator in this case.

On July 1, 2021, Claimant advised that the customer in Occurrence Number 1928414 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On July 6, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on September 14, 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 Customer also did not participate in the expungement hearing. 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.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1928414, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Claimant’s testimony; Notice and Affidavit; Claimant’s BrokerCheck® Report; and Claimant’s exhibits, including the settlement agreement.

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 1928414 from registration records maintained by the CRD for Claimant Kristopher Forest Etter (CRD Number 4562123) with the understanding that, pursuant to Notice to Members

04-16, Claimant Kristopher Forest Etter 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

The evidence indicated that the Customer independently went to Claimant for the express purpose of purchasing the complained of investment ("Investment"), which had been recommended to her by a third party unrelated to Claimant. Claimant recommended a balanced portfolio. Later, Claimant also recommended, on several occasions, that the Customer liquidate her interests in the Investment. The Customer declined to do so. The de-listing of the Investment is not something Claimant could have anticipated or controlled. Further, though Claimant participated in the settlement, the amount paid was not indicative of any admission of guilt and was consistent with established practice in minimizing the risks and expenses of litigation.

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 the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: June 3, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: September 14, 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

Andrea U. Calve

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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

Andrea U. Calve

Andrea U. Calve
Sole Public Arbitrator

09/28/2021

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.

September 28, 2021

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