

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Thomas A. Seiler

Case Number: 21-00356

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith
Incorporated

Hearing Site: Philadelphia, Pennsylvania

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 Thomas A. Seiler: Benjamin J. Biard, Esq., Winget, Spadafora & Schwartzberg, LLP, Miami, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Laura A. Pizzitola, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Thomas A. Seiler signed the Submission Agreement: February 9, 2021.

Statement of Answer filed by Respondent on or about: April 16, 2021.

Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: April 16, 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 258027; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for \$1.00 in compensatory damages.

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 August 5, 2021, Claimant advised that the customer in Occurrence Number 258027 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded, telephonic hearing on August 25, 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 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 also reviewed the settlement documentation related to Occurrence Number 258027, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; exhibits; Claimant's BrokerCheck® Report; and Claimant's testimony.

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 258027 from registration records maintained by the CRD for Claimant Thomas A. Seiler (CRD Number 2088467) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Thomas A. Seiler 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:

The customer alleged that the “loan interest and taxability of loans from his life insurance policy were misrepresented” and that the “free look period and surrender penalty were not properly disclosed” by Claimant.

During the hearing, Claimant testified that he had drafted a financial plan on behalf of the customer but had referred the customer to an insurance specialist within Respondent’s organization to analyze the customer’s insurance needs. Claimant also testified that the insurance specialist met with the customer and recommended that the customer purchase an insurance policy. Claimant further testified that the insurance specialist, not Claimant, ultimately sold the insurance policy to the customer and that the insurance specialist received sales commission on the sale of the insurance policy to the customer.

Claimant testified that he received a nominal referral fee associated with the sale of the insurance policy. Claimant further testified that at no time did he provide any advice or recommendations to the customer regarding the insurance policy. Thus, since Claimant was never involved with the purchase of the insurance policy, the customer’s allegations concerning Claimant’s misrepresentations and improper disclosures related to the purchase of the insurance policy are: (1) clearly erroneous, (2) false, and (3) Claimant could not have been involved in any alleged investment-related sales practice violation.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated 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 Arbitrators, including a pre-hearing conference with the Arbitrators, 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 9, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: August 25, 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

John J. Jordan	-	Public Arbitrator, Presiding Chairperson
Kathleen Jones Spilker	-	Public Arbitrator
Thomas Naylor	-	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

John J. Jordan

John J. Jordan
Public Arbitrator, Presiding Chairperson

09/14/2021

Signature Date

Kathleen Jones Spilker

Kathleen Jones Spilker
Public Arbitrator

09/15/2021

Signature Date

Thomas Naylor

Thomas Naylor
Non-Public Arbitrator

09/14/2021

Signature Date

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September 15, 2021

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