

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Thomas A. Seiler

Case Number: 21-00361

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. and Katherine Perrault, 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 349579; 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 the 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 349579 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 December 2, 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 Arbitrator was unable to review the settlement document related to Occurrence Number 349579. Due to the age of the underlying Occurrence, no customer records or the actual Settlement Agreement disposing of the claim were available. Respondent confirmed that after a diligent search, no documents relating to this matter was found. The Panel considered the amount of payment made to any party to the settlement. Based on Claimant's testimony and affidavit, 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: Claimant's BrokerCheck® Report, the pleadings, and Claimant's sworn 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 349579 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 complaint states that Claimant failed to follow an asset allocation recommended in a financial report drafted by Claimant. At the time the financial report was drafted, the customer’s assets were already fully invested and closely allocated to the recommendations contained in the financial report. Claimant testified that the customer was pleased with the performance of the invested assets and was, therefore, reluctant to reallocate those assets to the allocations shown in the financial report. Claimant further testified that the customer specifically declined to reallocate the assets and Claimant complied with the customer’s request to take no action on the asset allocation recommendation. Claimant also testified that the customer’s accounts continued to perform well.

Claimant testified that he could not make changes or reallocate invested assets without the customer’s permission because of the way the customer’s accounts were set up; all transactions had to be run by the customer first and be approved. Therefore, it was impossible for Claimant to have reallocated the customer’s assets without prior approval from the customer. Claimant also testified that the customer would call daily and started systematically being abusive to Claimant’s staff. After a period of time of having this constant harassment, Claimant decided he wanted to terminate the relationship with the customer and have his account transferred to a different broker.

Claimant testified that when he told the customer he was going to end their working relationship, the customer got upset. Further, Claimant stated that he had cancelled a dinner reservation he had with the customer and once he told the customer that he wanted to cancel the dinner reservation after already having ended their working relationship the customer became very angry. It was after this point that the customer started making false accusations against the Claimant.

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

**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 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 Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: June 17, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: December 2, 2021 1 session

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
Kattina V. Barsik	-	Public Arbitrator
Donald S. Bauman	-	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

12/15/2021

Signature Date

Kattina V. Barsik

Kattina V. Barsik
Public Arbitrator

12/16/2021

Signature Date

Donald S. Bauman

Donald S. Bauman
Non-Public Arbitrator

12/15/2021

Signature Date

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December 17, 2021

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