

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Mihir Patel

Case Number: 21-00363

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: New York, New York

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Mihir Patel: Liam O'Brien, Esq., McCormick & O'Brien, LLP, New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Mihir Patel signed the Submission Agreement: February 9, 2021.

Statement of Answer filed by Respondent on or about: March 29, 2021.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: March 29, 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 1626736.

In the Statement of Answer, Respondent requested that any request for damages be denied.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 13, 2021, Claimant advised that the customer in Occurrence Number 1626736 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 September 20, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing.

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 1626736, 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: Claimant's BrokerCheck® Report, the pleadings, Claimant's testimony, and the exhibits.

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 1626736 from registration records maintained by the CRD for Claimant Mihir Patel (CRD Number 4587238) with the understanding that, pursuant to Notice to Members 04-16, Claimant Mihir Patel 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; and the claim, allegation, or information is false.

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

The customer became a client of Claimant in 2010 and was a sophisticated high net worth investor seeking growth and income with a moderate risk tolerance. After discussing her needs and options, Claimant recommended, and the customer approved, a portfolio of investment grade corporate and municipal bonds. In 2012, following a period of volatility in fixed income markets, she filed a FINRA arbitration alleging unsuitability and alleging some \$700,000.00 in damages. The firm settled the matter for a small fraction of that amount to avoid the risk and expense of defense. Claimant was not involved in the settlement, which was not conditioned on consent to expungement, and did not contribute. FINRA's separate investigation was closed with no action taken. The investments made by the customer were suitable based on her investment objectives and profile. She received trade confirmations and account statements showing positions and with her independent advisors closely monitored her positions. Claimant also testified as to the negative impact these disclosures have had on his business and development efforts. The interests of consumer protection and awareness being in no way negatively implicated, the Panel recommends expungement.

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 event 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 the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: June 25, 2021	1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
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Hearing: September 20, 2021 1 session

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.

ARBITRATION PANEL

Robert E. Anderson	-	Public Arbitrator, Presiding Chairperson
Richard W. Cutler	-	Public Arbitrator
Jonathan Ashley Pomeroy	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Robert E. Anderson

Robert E. Anderson
Public Arbitrator, Presiding Chairperson

10/01/2021

Signature Date

Richard W. Cutler

Richard W. Cutler
Public Arbitrator

10/01/2021

Signature Date

Jonathan Ashley Pomeroy

Jonathan Ashley Pomeroy
Non-Public Arbitrator

10/01/2021

Signature Date

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October 04, 2021

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