

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jennifer M. Duncan

Case Number: 21-00516

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith, Inc.

Hearing Site: Richmond, Virginia

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 Jennifer M. Duncan: Ann K. Sullivan, Esq., Sullivan Collins Law Group, Norfolk, Virginia.

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

CASE INFORMATION

Statement of Claim filed on or about: February 24, 2021.

Jennifer M. Duncan signed the Submission Agreement: February 25, 2021.

Statement of Answer filed by Respondent on or about: April 8, 2021.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: April 8, 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 but asserted various affirmative defenses with respect to the monetary relief requests.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of the customer complaint (Occurrence Number 2092810) from Claimant's FINRA records; reimbursement of Claimant's arbitration filing fees; and an award of Claimant's costs and attorneys' fees associated with the filing and arbitration of this matter.

In the Statement of Answer, Respondent objected to Claimant's request for reimbursement of her arbitration filing fee, and Claimant's request for an award of her costs and attorneys' fees associated with the filing and arbitration of this matter.

At the hearing, Claimant withdrew the request for costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 1, 2021 and July 14, 2021, Claimant advised that the customer in Occurrence Number 2092810 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on August 10, 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 also participated in the expungement hearing and did not delineate a position on the request for expungement.

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 noted that the dispute related to Occurrence Number 2092810 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the testimony of Claimant and the Customer.

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 2092810 from registration records maintained by the CRD for Claimant Jennifer M. Duncan (CRD Number 2811850) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Jennifer M. Duncan 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 Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

As recorded on Claimant's BrokerCheck Report: "(t)he customer alleges misappropriation of funds when he opened an account and funded it...." Claimant testified that the Customer had met with her to open a self-directed account on September 24, 2019, but the Customer did not fund the account at that time. Claimant also testified that her position at that time with Respondent did not allow her to accept funds for such accounts. Therefore, Claimant was not able to accept such funds and, in fact, did not receive any funds from the Customer for the account. The Customer testified that he had opened the account as part of the estate of his recently deceased spouse. The Customer further testified that he was occupied at that time with other details surrounding her death and estate and was unsure whether the account had been funded when he made his initial inquiry with Respondent. The Customer also testified that any funds for the account would have come from an account or accounts he held at the time with Bank of America. The Customer testified that Respondent had notified him that no funds had been transferred into the new account and that, after checking, he had found none of his Bank of America accounts to show a debit that might have gone into the new, self-directed account. The Customer's testimony corroborates Claimant's testimony and shows that the complaint was clearly erroneous under Rule 2080(b)(1)(A).

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:

Expungement 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 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) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: August 10, 2021 1 session		

Total Hearing Session Fees	= \$	1,125.00
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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

Richard James Igou

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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

Richard James Igou

Richard James Igou
Sole Public Arbitrator

08/12/2021

Signature Date

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August 12, 2021

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