

**Award**  
**FINRA Dispute Resolution Services**

---

In the Matter of the Arbitration Between:

Claimant  
Tomoe Odahara

Case Number: 21-00720

vs.

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Incorporated

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

**REPRESENTATION OF PARTIES**

For Claimant Tomoe Odahara: Jordan D. Becker, Esq., Law Offices of Jordan D. Becker, Tarrytown, New York.

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

**CASE INFORMATION**

Statement of Claim filed on or about: March 18, 2021.  
Amended Statement of Claim filed on or about: August 12, 2021.  
Tomoe Odahara signed the Submission Agreement: March 18, 2021.

Statement of Answer filed by Respondent on or about: April 7, 2021.  
Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement: April 7, 2021.

**CASE SUMMARY**

In the Statement of Claim and Amended 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 Amended Statement of Claim, Claimant requested: expungement of Occurrence Number 1556920; and such other and further relief as deemed just and proper.

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

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Claimant filed an Amended Statement of Claim on August 12, 2021 to correct the typographical error regarding the Occurrence Number in the original Statement of Claim.

On September 7, 2021, Claimant filed an Affidavit advising that despite diligent efforts, Claimant was unable to serve the customer in Occurrence Number 1556920 (“Customer”) with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant detailed the efforts made to locate the Customer in the Affidavit. The Panel found that expungement is still appropriate as Claimant’s efforts to serve the Customer satisfied Claimant’s obligation to provide notice of the expungement request and hearing to the Customer.

The Arbitrator conducted a recorded telephonic hearing on September 27, 2021 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The Customer did not participate in the expungement hearing.

The Panel 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 Panel noted that the dispute related to Occurrence Number 1556920 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant’s BrokerCheck® Report; and the exhibits, including the relevant Disclosure Reporting Pages relating to the complaint at issue, the Customer Agreements, the Customer’s complaint and related e-mails, and the letter from Respondent to the Customer stating that the trades at issue were authorized.

The Award in this matter may be executed in counterpart copies.

## **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 Panel recommends the expungement of all references to Occurrence Number 1556920 from registration records maintained by the CRD for Claimant Tomoe Odahara (CRD Number 4809292) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tomoe Odahara 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 preponderance of the evidence presented shows that Claimant did not engage in unauthorized trading in the trust account at issue, as alleged by the Customer. Claimant testified that she has been in the financial industry for sixteen (16) years. Documentary evidence supported Claimant's testimony that, because there were two trustees on the trust account, Claimant was authorized to take instructions from either trustee. The record shows that the trades at issue were authorized by the second trustee. Also, the Respondent brokerage firm undertook an investigation at the time of the complaint, and finding the allegation to be without merit, denied the complaint. The Customer did not pursue the matter further. Thus, the Panel finds that the allegation of unauthorized trading is clearly erroneous and false. For these reasons, expungement of Claimant's record is appropriate.

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
------------------------	--------------

*\*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: August 6, 2021 1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: September 27, 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**

Annamaria Boccia Smith	-	Public Arbitrator, Presiding Chairperson
Susan C Lushing	-	Public Arbitrator
Mark Peter Haslinger	-	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**

***Annamaria Boccia Smith***

\_\_\_\_\_  
Annamaria Boccia Smith  
Public Arbitrator, Presiding Chairperson

**10/06/2021**

\_\_\_\_\_  
Signature Date

***Susan C Lushing***

\_\_\_\_\_  
Susan C Lushing  
Public Arbitrator

**10/06/2021**

\_\_\_\_\_  
Signature Date

***Mark Peter Haslinger***

\_\_\_\_\_  
Mark Peter Haslinger  
Non-Public Arbitrator

**10/06/2021**

\_\_\_\_\_  
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.

October 07, 2021

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