

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Archie Jay Morris, III

Case Number: 21-00784

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Atlanta, Georgia

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 Archie Jay Morris, III: Harris Freedman and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

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

CASE INFORMATION

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

Archie Jay Morris, III signed the Submission Agreement: March 24, 2021.

Statement of Answer filed by Respondent on or about: April 7, 2021.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: April 7, 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 with respect to any requests for damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 58079 (“Customer A”), 58080 (“Customers B”), and 58081 (“Customer C”) from his CRD record pursuant to FINRA Rules 2080(b)(1)(A) and (C); expungement of Occurrence Number 1472805 (“Customer D”) from his CRD record pursuant to FINRA Rules 2080(b)(1)(A), (B), and (C); deletion of all Disclosure Reporting Pages accompanying Occurrence Numbers 58079, 58080, 58081, and 1472805; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not delineate a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 13, 2021, Claimant advised that Customers B and D were served with the Statement of Claim and notice of the date and time of the expungement hearing. On September 20, 2021, Claimant filed an Affidavit confirming that Customers B and D were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On September 13, 2021, Claimant filed the LexisNexis Death Record for Customer A. Therefore, the Arbitrator determined that service of Customer A was excused.

On September 13, 2021, Claimant filed the LexisNexis Death Record and an obituary for Customer C. Therefore, the Arbitrator determined that service of Customer C was excused.

On October 1, 2021, Claimant filed notice of Claimant’s attempt to obtain the settlement documentation for Occurrence Numbers 58079, 58080, and 58081. Claimant attests that he does not have copies of the settlement documents for these occurrences, and that Respondent confirmed in writing that they were unable to locate any documents related to these occurrences.

On October 12, 2021, Claimant filed an Affidavit from Customer B1 in support of Claimant’s expungement request.

The Arbitrator conducted a recorded, telephonic hearing on October 21, 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 Customers did not participate in the expungement hearing. The Arbitrator found that Customers B and D had notice of the expungement request and hearing.

On November 2, 2021, the Arbitrator submitted a post-hearing Order directing the Parties to produce the Commodity Futures Trading Commission (“CFTC”) arbitration award corresponding to Occurrence Number 58079 (CFTC Case Number 87-R415). On November 17, 2021, Claimant submitted notice that Claimant does not have a copy of the requested arbitration award, and that Respondent confirmed to Claimant in writing that Respondent was unable to locate any documents

related to Occurrence Number 58079. On November 17, 2021, Respondent submitted notice that Respondent was unable to locate any documents related to Occurrence Number 58079.

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 occurrences in the CRD.

The Arbitrator did not review the settlement documentation related to Occurrence Numbers 58079, 58080, and 58081. The Arbitrator determined that a good faith effort was made by Claimant to obtain the settlement documentation. The Arbitrator noted, based on Claimant's testimony, that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the dispute related to Occurrence Number 1472805 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; the letter from Customer B1 supporting expungement; Claimant's BrokerCheck® Report; the pleadings and exhibits; and the fact that Respondent took no position on the request for expungement.

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 Numbers 58079, 58080, 58081, and 1472805 from registration records maintained by the CRD for Claimant Archie Jay Morris, III (CRD Number 1037933) with the understanding that, pursuant to Notice to Members 04-16, Claimant Archie Jay Morris, III 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 findings of fact:

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

The claim, allegation, or information is false.

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

Occurrence Number 58079 (CFTC Case Number 87-R415):

Expungement of Occurrence Number 58079 is being recommended because the facts fit both FINRA Rules 2080(b)(1)(A) and (C).

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

Customer A was a successful dentist and an experienced investor who represented himself as an expert. He claimed to be an expert in silver commodities. Customer A was not a client of Claimant, but rather, Customer A was a client of one of Claimant's colleagues who did not trade commodities. As a favor to his colleague, Claimant handled the commodity transaction.

Claimant reviewed Customer A's account and determined that Customer A had enough cash in the account to purchase sixteen (16) silver commodity contracts. Customer A, however, directed Claimant to purchase sixty (60) contracts. To do so would require the use of margin in Customer A's account to cover the remaining forty-four (44) contracts. Claimant warned Customer A that this was very risky and explained all the reasons why. Customer A remained firm that he wanted sixty (60) contracts, and ultimately Claimant purchased sixty (60) contracts for Customer A. Subsequently, the silver commodities contracts declined. Customer A filed a complaint alleging that Claimant and Respondent failed to disclose material information relating to the margin requirement for the purchase of future silver contracts. The Arbitrator finds Claimant's version of the incident to be correct and truthful.

(C) The claim, allegation, or information is false.

The Arbitrator finds that the aforementioned facts and reasoning also apply with respect to FINRA Rule 2080(b)(1)(C). The Arbitrator finds that claim by Customer A is false with respect to Claimant.

Occurrence Numbers 58080 and 58081:

Expungement of Occurrence Numbers 58080 and 58081 is being recommended because the facts fit both FINRA Rules 2080(b)(1)(A) and (C).

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

The allegation of breach of fiduciary duties is false and factually impossible because Claimant's conduct was, at all times, in accordance with the standards of all FINRA Rules. These two cases both relate to purchases by Customers B and C of real estate investments through Arvida Corporation ("Arvida") which was the manager of the investments. The product in question in these cases was represented to Claimant by Arvida as a diversified product. Later, Claimant learned that the investment was 100% invested in a failed subdivision in the desert. Claimant took it on himself to ask Respondent to refund the investment amounts paid by Customers B and C. Respondent agreed, and Claimant wrote the request letters for Customers B and C in the manner which would permit Respondent to return the investment amounts. Claimant had no idea that these letters that he wrote would be considered "customer complaints." Customers B and C had no knowledge that there was anything wrong with the investments until Claimant proactively called it to their attention.

Customers B and C received the return of their investments and continued to maintain their investment accounts with Claimant and Respondent.

(C) The claim, allegation, or information is false.

The Arbitrator finds that the aforementioned facts and reasoning also apply with respect to FINRA Rule 2080(b)(1)(C). The Arbitrator finds that the claims by Customers B and C are false with respect to Claimant.

Occurrence Number 1472805:

Expungement of Occurrence Number 1472805 is being recommended because the facts fit both FINRA Rules 2080(b)(1)(A) and (C).

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

Customer D was a wealthy physician with thirty (30) years of investment experience and high financial liquidity. After discussing Customer D's needs, Claimant suggested a certain life insurance policy that would satisfy Customer D's primary concern, which was the ability to pay estate taxes after both he and his spouse passed away. Claimant explained all of the details of the policy: costs, risks, terms, advantages, and disadvantages. The main factor in Customer D's purchase was that there was guaranteed payout at the death of the second spouse. It could not go lower than the guaranteed \$2,000,000.00 but could go higher. Customer D bought the policy and started to make premium payments. He suddenly stopped. Anecdotally, Customer D's son lost most of his father's money in poor investments (not related to any involvement by either Claimant or Respondent). Customer D, now unable to make the required premium payments, defaulted. His premium payments were returned, and the policy lapsed. Customer D complained that the policy was an unsuitable investment, which was not factual. Had Customer D continued to make the premium payments, at the death of both spouses, the guaranteed death benefit would have been paid to the estate in an amount of at least ten (10) times the investment. The fault was solely the action (or inaction) of Customer D. Customer D never proceeded any further with his complaint.

(C) The claim, allegation, or information is false.

The Arbitrator finds that the aforementioned facts and reasoning also apply with respect to FINRA Rule 2080(b)(1)(C). The Arbitrator finds that the claim by Customer D is false with respect to 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:

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 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 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) pre-hearing session with a single Arbitrator @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: July 14, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: October 21, 2021	1 session	
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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.

ARBITRATOR

Harvey R. Linder

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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

Harvey R. Linder

Harvey R. Linder
Sole Public Arbitrator

12/06/2021

Signature Date

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December 07, 2021

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