

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Evan Yahney

Case Number: 21-00834

vs.

Respondent
Merrill Lynch Pierce Fenner & Smith Incorporated

Hearing Site: Tampa, Florida

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 Robert Evan Yahney: Daniel P. Dietrich, Esq., Gunster, Yoakley & Stewart, P.A., Tampa, Florida.

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

CASE INFORMATION

Statement of Claim filed on or about: March 29, 2021.

Amended Statement of Claim filed on or about: April 12, 2021.

Robert Evan Yahney signed the Submission Agreement: March 29, 2021.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: April 30, 2021.

Merrill Lynch Pierce Fenner & Smith Incorporated signed the Submission Agreement: April 30, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, 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 to the Amended Statement of Claim, Respondent took no position on Claimant’s expungement requests and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested: expungement of Occurrence Numbers 1935194, 1929209, 1929208, and 1891444 from his CRD records, and such other and further relief that the Arbitrator deems just and equitable.

In its Statement of Answer to the Amended Statement of Claim, Respondent did not delineate a request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 18, 2021, the parties advised FINRA Dispute Resolution Services of their mutual agreement to proceed with one arbitrator in this matter.

On September 16, 2021, Claimant advised that the customers in Occurrence Numbers 1935194, 1929209, 1929208, and 1891444 (“Customers”) were 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 December 8, 2021, so the parties could present oral argument and evidence on Claimant’s requests for expungement.

Respondent participated in the expungement hearing.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

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 also reviewed the settlement documentation related to Occurrence Numbers 1935194, 1929209, 1929208, and 1891444, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s Statement of Claim and Amended Statement of Claim, Respondent’s Answer, the four underlying Statements of Claim and settlement agreements and Claimant’s testimony at the hearing.

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 1935194, 1929209, 1929208, and 1891444 from registration records maintained by the CRD for Claimant Robert Evan Yahney (CRD Number 4038119) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert Evan Yahney 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Arbitrator has made the above Rule 2080 finding as to all of the Occurrences based on the following reasons:

The Customers brought no direct evidence of Claimant being involved in providing them with bad advice. What did appear were simple allegations by the Customers' attorney in two basically identical sentences at the beginning of each of the Customer's complaints. Otherwise, there was no further mention whatsoever of Claimant. All activities addressed in the four complaints involved an individual whom Claimant admitted he was assigned to serve as a normal “coach,” but stated that he provided no advice to her or the Customers regarding their investment activities that were the subjects of their complaints. As such, the Arbitrator gives credibility to Claimant's testimony at hearing as opposed to the Customers' attorney's standard complaint language. Finally, Claimant neither contributed to, nor was mentioned, in the settlement of the customer claims.

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(s) that employed the associated person(s) at the time of the event(s) 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: August 23, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: December 8, 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.

ARBITRATOR

Thomas J. Patka

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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

Thomas J. Patka

Thomas J. Patka
Sole Public Arbitrator

12/17/2021

Signature Date

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December 20, 2021

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