

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael G. Rudelson

Case Number: 21-00863

vs.

Respondent
Kestra Investment Services, LLC,
successor to NFP Securities, Inc.

Hearing Site: Houston, Texas

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 Michael G. Rudelson (“Claimant”): Cynthia R. Levin Moulton, Esq. and Myles Shaw Moulton & Wilson, LLP, Bellaire, Texas.

For Respondent Kestra Investment Services, LLC, successor to NFP Securities, Inc. (“Respondent”): Shawn Shook, Esq., Kestra Investment Services, LLC., Austin, Texas.

CASE INFORMATION

Statement of Claim filed on or about: April 1, 2021.
Claimant signed the Submission Agreement: March 31, 2021.

Statement of Answer filed on or about: April 14, 2021.
Respondent signed the Submission Agreement: April 14, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2016127 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not state a request for relief.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 19, 2021, the parties agreed to have this matter heard by one arbitrator.

On July 29, 2021, Claimant advised that the customer in Occurrence Number 2016127 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). Claimant also filed an email from the Customer dated July 27, 2021 confirming that the Customer received the Notice and supported Claimant’s request for expungement.

The Arbitrator conducted a recorded, in-person hearing on August 9, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

At the hearing, Claimant submitted a letter from the Customer dated July 29, 2021 in support of the expungement request.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 2016127 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings and Claimant’s exhibits, including Claimant’s BrokerCheck® Report.

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 2016127 from registration records maintained by the CRD for Claimant Michael Gary Rudelson (CRD Number 721749) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael Gary Rudelson 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; and

The claim, allegation, or information is false.

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

The reported information arose because the Customer had complained, by email to the Claimant, that when the Claimant had sold him the annuity at issue, he had told the Customer "that the value would never go below the most recent high." The evidence indicated that was not true. The Customer purchased the variable annuity because it provided guaranteed income for life and had a guaranteed death benefit. Claimant testified that he fully explained the annuity to the Customer several times and in detail, and the Customer signed documents acknowledging that Claimant had explained the annuity and that it was suitable for his insurance and investment objectives, financial situation, and needs. Claimant demonstrated that the value of the annuity contract never dipped below the purchase price. The evidence also demonstrated that the Customer continues to own the annuity and that it and multiple other investments he maintains with Claimant have performed well. The Customer did not pursue his complaint and submitted a notarized letter supporting Claimant's request for expungement in which the Customer stated that Claimant had accurately described the annuity to him, had not represented "that the annuity's value would never go below its most recent high," and that he was aware there would be fluctuations in value. The Customer also apologized for any inconvenience his email may have caused. The evidence demonstrated that the variable annuity was a suitable investment, that it was fully explained and understood by the Customer, and that Claimant performed his duties in a thorough, ethical and professional manner. Accordingly, the evidence demonstrated that the claim, allegation or information is factually impossible or clearly erroneous and is false. Public disclosure of the false and clearly erroneous representations made by the Customer does not offer any public protection and has no regulatory value.

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:

| | |
|--------------------------|---------------|
| Initial Claim 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(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 @ \$1,125.00/session | = \$ | 1,125.00 |
| Pre-Hearing Conference: July 26, 2021 | 1 session | |
| One (1) hearing session on expungement request @ \$1,125.00/session | = \$ | 1,125.00 |
| Hearing: August 9, 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

Lynne M. Gomez

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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

Lynne M. Gomez

Lynne M. Gomez
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)