

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Brian Christopher Kutsmeda

Case Number: 21-00888

vs.

Respondent

Oppenheimer & Co., Inc.

Hearing Site: Boca Raton, 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 Brian Christopher Kutsmeda: Cory S. Zadanosky, Esq., Zadanosky & Associates, P.A., Boca Raton, Florida.

For Respondent Oppenheimer & Co., Inc.: Justin Sciabbarrasi, Esq., Oppenheimer & Co, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 5, 2021.

Brian Christopher Kutsmeda signed the Submission Agreement: April 5, 2021.

Statement of Answer filed by Respondent on or about: May 18, 2021.

Oppenheimer & Co., Inc. signed the Submission Agreement: May 24, 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, but did oppose any monetary damages demands either explicitly or implicitly stated by Claimant in Claimant’s Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of all information from Claimant's CRD of Occurrence Number 1900007, and such other and further relief as Claimant may be entitled to in law or in equity or may be otherwise just and proper under the circumstances.

In the Statement of Answer, Respondent denied that it is liable to Claimant for any monetary damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 6, 2021, Claimant advised that the customer in Occurrence Number 1900007 ("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 November 3, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

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

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

On November 10, 2021, the Arbitrator issued a post-hearing Order directing Claimant to file a copy of the Statement of Claim from the underlying proceeding (Case Number 16-02362). On November 12, 2021, Claimant filed a copy of the Statement of Claim from the underlying proceeding.

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 also reviewed the settlement documentation related to Occurrence Number 1900007, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the documents bearing Bates label numbers Kutsmeda 000001 through 000192.

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 1900007 from registration records maintained by the CRD for Claimant Brian Christopher Kutsmeda (CRD Number 2371330) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Christopher Kutsmeda 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

The Arbitrator finds that the claim is false, and a recommendation of expungement is warranted.

The Customer alleged that he purchased Unit Investment Trusts ("UIT's") on the recommendation of his broker ("Broker") and that Claimant failed to supervise, train, and oversee Broker. The Customer claimed that owning UIT's caused him great loss and that he, the Customer, opened his account with Respondent in 2011, and invested with Broker from that point on, with one brief pause of a few months.

Claimant did not join Respondent until February of 2014. Prior to Claimant's joining Respondent, the Customer opened a Put Hedged Portfolio Enhancement Program and signed an Option Account Form and Information Sheet in December of 2013, in which the Customer agreed to "uncovered option transactions."

After joining Respondent, Claimant had a phone conversation with the Customer on September 30, 2014. Claimant then wrote a letter to the Customer confirming details of the call. The letter states, in part, "You confirmed that all transactions are discussed with [Broker] prior to execution and that the recent trading strategies were initiated by yourself. Also confirmed was your understanding of your securities on margin and utilizing UIT's to grow the account." The letter also states "If you have any comments to add to this conversation summary, please notify me... In the event that I do not hear from you, we will assume that the conversation summary meets your approval."

Claimant then had a lunch meeting with the Customer on November 21, 2014. In a follow-up letter dated December 18, 2014, Claimant wrote "During our meeting we reviewed much of the recent trading activity and discussed the use of UIT's. You expressed that you wanted to maximize your return on stocks and diversify your investments utilizing UIT's... You also

stated that you utilized UIT's with the help of [Broker] to invest your core investment funds and to provide a more diversified portfolio in addition to the individual stock positions."

The Arbitrator finds that it is clear from the above, and from numerous exhibits presented at the hearing, that Respondent's staff, including Claimant, were reviewing the Customer's substantial investment accounts and the purchases and sales in those accounts. The Arbitrator finds that it is clear that the Customer's claims that Claimant did not properly train and supervise Broker are false.

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 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) pre-hearing session with a single Arbitrator @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: July 28, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: November 3, 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

Robert G. Geeseman

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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

Robert G. Geeseman

Robert G. Geeseman
Sole Public Arbitrator

11/19/2021

Signature Date

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November 19, 2021

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