

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Eric Robert Abbott

Case Number: 21-00927

vs.

Respondent
J.P. Morgan Securities, LLC

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 Eric Robert Abbott: Harris Freedman, Esq., Of Counsel, HLBS Law, Westminster, Colorado.

For Respondent J.P. Morgan Securities, LLC: Michael A. Gross, Esq., Ulmer & Berne LLP, Boca Raton, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 8, 2021.
Eric Robert Abbott signed the Submission Agreement: April 8, 2021.

Statement of Answer filed by Respondent J.P. Morgan Securities, LLC on or about: April 22, 2021.
J.P. Morgan Securities, LLC signed the Submission Agreement: April 22, 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 denied the allegations made in the Statement of Claim, asserted various defenses, and took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 2061741,

including deletion of all Disclosure Reporting Pages relating to Occurrence Number 2061741, from his CRD records; and any other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that all costs and fees associated with this matter be assessed to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 28, 2021, the parties entered a Joint Stipulation to proceed with one arbitrator in this matter.

On November 8, 2021, Claimant advised that the two customers in Occurrence Number 2061741 (jointly referred to as “Customers” and individually as “Ms. Customer” and “Mr. Customer”) were served with the Statement of Claim and notice of the date and time of the expungement hearing. On November 15, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On December 2, 2021, in response to an email from Mr. Customer, Respondent provided details for the Customers to participate in the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on December 7, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

The Arbitrator found that the Customers had notice of the expungement request and hearing.

Respondent participated in the expungement hearing and as stated in the Statement of Answer, did not take a position on the request for expungement.

Mr. Customer also participated in the expungement hearing and opposed the expungement request.

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 2061741, 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 record, including documents and exhibits submitted and the testimony at the time of 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 Number 2061741 from registration records maintained by the CRD for Claimant Eric Robert Abbott (CRD Number 4331367) with the understanding that, pursuant to Notice to Members 04-16, Claimant Eric Robert Abbott 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 claim, allegation, or information is false.

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

Mr. Customer testified that he and Ms. Customer maintained accounts with Respondent and its financial advisor, Claimant. The Customers were sold a Transamerica variable annuity. Mr. Customer stated that he and Ms. Customer were told they would receive no less than 5.5% returns every year. After years of underperformance, Mr. Customer stated that they began questioning the representations made by Claimant. The Customers were under the belief that the 5.5% minimum growth promises were not properly explained to them by Claimant. The Customers could only receive the 5.5% as an income benefit after the contract was annuitized. Accordingly, it is Customers' position that Claimant's actions in this case constitute a breach of fiduciary duty, negligence, breach of contract, fraud, misrepresentation, failure to supervise, negligent hiring, unsuitable investment recommendations, and violations of the conduct rules of FINRA.

Claimant provided testimony and Exhibits 1-8 stating on or about July 2014, the Customers made an informed decision to invest a portion of their portfolio in a variable annuity issued by Transamerica Life Insurance Company ("Variable Annuity"). Prior to making the investment, the Customers had invested in variable, fixed, and indexed annuities. They understood and appreciated the differences among the products, including the well-known fact that a variable annuity varies or fluctuates in value. Mr. Customer stated that, more than five years after he purchased the Variable Annuity, Claimant did not guarantee that the Variable Annuity would increase in value by at least 5.5% each year. Mr. Customer was well aware of the fact that the Variable Annuity was not guaranteed to increase in value by any amount, could fluctuate in value, and could decline in value given (i) his prior investment in a variable annuity, (ii) his discussions with Claimant before and after making the investment, (iii) the multiple documents that he signed to make the investment, wherein he acknowledged the foregoing risks, and (iv) the prospectus, contract, and other documents and disclosures provided to the Customers by Transamerica and Respondent.

Accordingly, Claimant requested expungement of this customer dispute, Occurrence Number 2061741, from his CRD records, pursuant to FINRA Rule 2080(b)(1)(A) on the basis that the claim, allegation, or information is factually impossible or clearly erroneous and 2080(b)(1)(C) on the basis that the claim, allegation, or information is false. Further, Claimant requested the deletion of all Disclosure Reporting Pages accompanying this customer dispute, Occurrence number 2061741, in their entirety.

Accordingly, as Claimant acted in good faith, made all the proper disclosures, and made no misrepresentation of any kind, there is no basis in fact for the within complaint and/or claim initiated by the Customers against Claimant. Claimant is therefore entitled to full expungement of this complaint as it appears on his CRD record and BrokerCheck report, as the claims/allegations against Claimant are false.

The Arbitrator grants Claimant the following relief: recommendation of expungement of Occurrence Number 2061741 from Claimant's CRD record, pursuant to a finding that the claims, allegations, or information are false, pursuant to FINRA Rule 2080(b)(1)(C).

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 J.P. Morgan Securities, LLC 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 26, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00 /session = \$ 1,125.00
Hearing: December 7, 2021 1 session

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| Total Hearing Session Fees | = \$ 2,250.00 |
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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

Karimu F. Hill-Harvey

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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

Karimu F. Hill-Harvey

Karimu F. Hill-Harvey
Sole Public Arbitrator

12/10/2021

Signature Date

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December 10, 2021

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