

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Calvin Barber, Jr.

Case Number: 21-01019

vs.

Respondent
Pruco Securities, LLC

Hearing Site: Columbus, Ohio

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 John Calvin Barber, Jr. (“Claimant”): Dochter Kennedy, Esq. and Harris Freedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Pruco Securities, LLC (“Respondent”): Jennifer E. Novoselsky, Esq., Reyes Kurson, Ltd., Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: April 16, 2021.
Claimant signed the Submission Agreement: April 16, 2021.

Statement of Answer filed on or about: June 7, 2021.
Respondent signed the Submission Agreement: April 20, 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.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1517937 and 1289750 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator deny any requests for damages and any potential request for attorneys' fees and costs and that all forum fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 7, 2021, Claimant filed a Death Record and obituary for the customer in Occurrence Number 1517937. Claimant advised that the customer in Occurrence Number 1289750 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On September 13, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on November 18, 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 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1517937, 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.

The Arbitrator noted that the dispute related to Occurrence Number 1289750 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: Claimant's testimony; Claimant's BrokerCheck® Report; Claimant's exhibits; Statement of Claim; and statements by Claimant's counsel during the hearing with respect to information provided by Respondent's attorney during discovery, which Respondent's attorney verified as being accurate.

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 1517937 and 1289750 from registration records maintained by the CRD for Claimant John Calvin Barber, Jr. (CRD Number 4883976) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Calvin Barber, Jr. 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:

Occurrence Number 1517937:

The customer alleged misrepresentation concerning the failure to disclose tax consequences in the purchase of 2008 annuities. Claimant was acting as a coach to another registered representative at the firm (“RS”) to assist him in learning how to handle annuities. Claimant’s involvement was meeting with RS when RS conferred with the customer in collecting the information to determine what would be appropriate resolution for handling her multiple annuities. After discussing with RS the options and participating in presenting those options to the customer, Claimant was not involved with the customer other than collecting a percentage of RS’ commission. At no time did Claimant give any tax advice to the customer. Further, Claimant was not listed as the registered representative on the document signed by the customer. The claim arose because the intended 1031 exchange was not executed properly, and the old annuity money was paid directly to the customer rather than directly to the new annuity insurance company. The presentation of the exchange to the customer was in February, 2008. Claimant left Respondent in July, 2009. The customer’s complaint (“Complaint”) was received in June, 2010 and settled in September, 2010. Although Respondent offered Claimant the opportunity to respond to the Complaint, there is no recollection or record of Claimant ever responding in any way or being part of any discussion of the Complaint or settlement. Additionally, he did not contribute to the settlement of the case. Therefore, the claim was false regarding the accusation that Claimant misrepresented and failed to disclose the tax consequences in the purchase of her annuities.

Occurrence Number 1289750:

The Customer allegedly claimed failure to disclose surrender charges. No damage amount was alleged. The Customer was concerned about surrender charges of 4.0% on a Nationwide annuity that was being exchanged for new proposed annuity. Claimant requested that she write a letter to him explaining her specific concern. The letter was opened by Respondent and the information was forwarded internally to staff who interpreted the letter as a complaint and filed it with the CRD. The evidence clearly shows that there would be a 4.0% surrender charge and that the Customer also received a 4.0% bonus payment to offset the surrender charge. This document clearly states and was signed by the Customer that she reviewed the comparison and understood the disclosures. Further, this was Claimant’s first annuity and his manager assisted clearly explaining the surrender charges and bonus.

The Customer continued using Claimant’s services for over three years after the alleged complaint. Therefore, the claim, allegation, and information is 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:

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: August 3, 2021 1 session

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

Hearing: November 18, 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

Julius Z. Frager

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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

Julius Z. Frager

Julius Z. Frager
Sole Public Arbitrator

11/24/2021

Signature Date

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November 24, 2021

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