

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Tina Wang

Case Number: 21-01046

vs.

Respondent
Fidelity Brokerage Services LLC

Hearing Site: San Francisco, California

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 Tina Wang (“Claimant”): Joel M. Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

For Respondent Fidelity Brokerage Services LLC (“Respondent”): Noah D. Sorkin, Esq., FMR LLC Legal Department, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: April 21, 2021.
Claimant signed the Submission Agreement: April 21, 2021.

Statement of Answer filed by Respondent on or about: June 24, 2021.
Respondent did not sign the Submission Agreement.

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:

1. Expungement of Occurrence Number 2058880 from Claimant's CRD records pursuant to FINRA Rule, as:
 - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
 - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
 - c. the claim, allegation, or information is false; and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent did not bring forth any specific request for relief.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On June 24, 2021, the parties agreed to proceed with a single arbitrator for this matter.

On October 6, 2021, Claimant advised that the customer in Occurrence Number 2058880 ("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 October 14, 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, did not oppose 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 2058880, 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: Claimant's Statement of Claim; Respondent's Statement of Answer; all exhibits; and testimony provided by Claimant and Respondent at the expungement 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:

The Arbitrator recommends the expungement of all references to Occurrence Number 2058880 from registration records maintained by the CRD for Claimant Tina Wang (CRD Number 5587352) with the understanding that, pursuant to Notice to Members 04-16, Claimant Tina Wang 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, 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:

Background

According to the Statement of Claim of Claimant, Tina Wang, exhibits that were submitted with the Statement of Claim, supplemental exhibits submitted prior to the hearing, and her testimony, the following are the basic facts of the matter.

The Customer and her husband became Claimant's clients in late 2017 after their previous advisor from Respondent retired. Their account held at Respondent was heavily concentrated in IBM stock, representing over 85% of their account. (They did have other holdings outside of this account. It appears that the IBM holdings represented about 20% of their net worth.)

Claimant, who specializes in retirement planning, strongly advised them to diversify by selling the IBM stocks. In March 2018, they agreed to place these holdings in a managed Personal Advisory Services ("PAS") account. There were instructions that the IBM holdings were to be sold "within three years".

In fact, the IBM holdings were entirely liquidated by the end of 2018, with the bulk of them being sold in April 2018. In 2019, the Customer and her husband complained to Claimant and Respondent that they had not authorized the sale of all of the IBM stocks in 2018,

but had understood that one-third of the IBM stocks would be sold each year for three years. They stated that they had incurred a large capital gains tax in 2018.

Claimant and Respondent disputed this. They stated that there had never been any instruction or agreement to sell only one-third of the IBM shares each year. Respondent offered a settlement, but the Customer and her husband refused it and filed a complaint with FINRA later in 2019. The complaint was only filed against Respondent and did not list Claimant as a party.

The FINRA matter was eventually settled. Respondent made a payment to the Customer and her husband. Claimant had no part in the settlement and did not contribute to it. As a result of the filing of their complaint with Respondent and their later complaint to FINRA, the occurrence was noted on Claimant's CRD.

Discussion

Claimant, in her testimony, stated that there was never any instruction or agreement that only one-third of the IBM shares would be sold each year. Rather, simply that the IBM shares would be sold "within" three years. This statement is supported by Claimant's supplemental hearing exhibits, which included the PAS Account: Fundamentals. It states:

"Should a client fund the client's Account with any eligible positions that Strategic Advisers considers to be a concentrated position, Strategic Advisers will generally sell down such positions within the first 90 days after funding the Account in an effort to appropriately diversify the client's portfolio, and to reduce risk. Clients may incur taxable gains or losses as a result of any such transactions. A client may elect to have Strategic Advisers potentially spread the capital gain over a longer period of time by selling the concentrated positions of eligible securities in the client's Account on a more gradual schedule (the "gradual sell-down option"). In circumstances where the expected capital gain is deemed reasonable, Strategic Advisers may sell concentrated positions within a short period of time, even if the gradual sell-down option is selected. Thereafter, Strategic Advisers will liquidate any remaining concentrated positions opportunistically over up to a maximum of three successive tax years to defer the realization of taxable gains associated with the client's concentrated positions."

Claimant did not, herself, sell the IBM stocks. The stocks were in a PAS account and the stocks were actually sold by the account managers. The stocks, when sold, earned the Customer and her husband a considerable gain, on the order of 50%, on their initial investment. Within a short period of time, the IBM stocks had declined approximately 25% in value and have still not recovered the value they were sold at. Therefore, it appears that the PAS managers were correct in their assessment that the IBM stocks should be sold at that time.

Claimant points out that the Customer and her husband received monthly statements showing all of the transactions, including sales of the IBM stocks and did not complain until the following year. She also notes that, if the Customer and her husband had, indeed really wished to own IBM stocks, they could have bought them back later in the year at a significant discount, as the price had declined by 25%, but they did not do so.

Claimant also points out that, whether the IBM stocks had been sold in one year or three years, the total capital gains tax (when calculated against any rise or fall in the share price) would have still been approximately the same.

In addition, Respondent's counsel stated vigorously that Respondent strongly supported Claimant's position and expungement of this occurrence from her CRD records at the hearing. In response to a question from the Arbitrator, Respondent's counsel also stated that Respondent had settled the matter only due to a financial calculation as to what the cost of litigation would have been and the settlement should not in any way be considered an acknowledgement that the claim had any merit.

Finally, the Customer and her husband were adequately notified of this proceeding and this hearing and did not respond in any way.

Conclusion

Claimant's testimony in this matter was clear, credible and convincing. The objective documentary material submitted supports her testimony. The preponderance of the evidence is that the initial claim was false. Therefore, the Arbitrator recommends that Claimant's request be granted and that the occurrence be expunged from her CRD records.

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	= \$	1,600.00
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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 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	= \$	2,000.00
Member Process Fee	= \$	3,850.00

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 @ \$1,150.00/session	= \$	1,150.00
Pre-Hearing Conference: August 6, 2021		1 session

One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: October 14, 2021 1 session		
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Total Hearing Session Fees	= \$	2,300.00

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

Philip Aaron Tymon

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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

Philip Aaron Tymon

Philip Aaron Tymon
Sole Public Arbitrator

10/26/2021

Signature Date

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.

October 27, 2021

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