

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Timothy Roger Atyeo

Case Number: 21-01100

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 Timothy Roger Atyeo: Cory S. Zadanosky, Esq., Zadanosky & Associates, P.A., Boca Raton, Florida.

For Respondent Oppenheimer & Co. Inc.: William M. Cassarini, Esq., Oppenheimer & Co. Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 2021.

Timothy Roger Atyeo signed the Submission Agreement: April 27, 2021.

Statement of Answer filed by Respondent on or about: June 16, 2021.

Oppenheimer & Co. Inc. signed the Submission Agreement: July 19, 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 request for expungement and denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2039963 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 objected to Claimant's request for any monetary damages demands either explicitly or implicitly stated by Claimant in Claimant's Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about December 8, 2021, Claimant advised that the customers in Occurrence Number 2039963 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about December 8, 2021, Claimant filed with FINRA Dispute Resolution Services proof of service via FedEx and via first class U.S. mail upon the Customers, advising that the Customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On or about January 9, 2022, Respondent filed with FINRA Dispute Resolution Services a notice advising it would not be participating at the expungement hearing, as Respondent did not oppose Claimant's request for expungement.

The Arbitrator conducted a recorded, telephonic hearing on January 10, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers 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 2039963, 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 exhibits and Claimant's testimony.

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 2039963 from registration records maintained by the CRD for Claimant Timothy Roger Atyeo (CRD Number 1544728) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Timothy Roger Atyeo 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 claim, allegation, or information is false.

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

The Customers were notified of the expungement hearing and did not attend. Respondent was previously named as a party in a FINRA arbitration claim by the Customers in 2019 but not Claimant. The case was settled to avoid the cost of litigating, and Claimant did not contribute to the settlement nor was the settlement conditioned upon an agreement to expunge. The Customers originally claimed that Claimant recommended unsuitable investments in the energy sector. The Customers originally invested in 2011 and sought out high yield investments for the monies invested with Respondent, which investments were only a portion of their overall portfolio. The accounts were non-discretionary accounts and were not retirement accounts. The Customers’ investment objectives were aggressive current income and aggressive capital appreciation. The Customers withdrew significant amounts of cash from the accounts from inception in 2011, and the erosion of the value of the accounts was attributable to the significant cash withdrawals. Each account showed gains over the investment periods for the Customers. Evidence admitted showed the risk and investment objectives consistent with the Customers’ investments and strategy. Investments consisted of equities, both common and preferred stock, bonds, mutual funds and limited partnership interests, as referenced in Claimant’s Exhibits. The Customers received statements and confirmations and did not complain or object to the investments. The Customers also received verification of the Customers’ account status, investment objectives and risk tolerance annually and never questioned the classifications. Claimant discussed each investment with the Customers, who were sophisticated, educated and successful businessmen prior to the purchase and supplied the Customers with research material. The Customers accessed their accounts online extensively and were well aware of account activity, as referenced in Claimant’s Exhibits. The first complaint as to the accounts by the Customers was in February of 2019. The Customers’ allegations are clearly erroneous and false. Based on emails and testimony, Claimant suggested diversification outside of the energy sector, but this advice was rejected, as referenced in Claimant’s Exhibits. The sister of the Customers still has an account with Claimant.

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 = \$ 1,600.00

**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 = \$ 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 16, 2021 1 session		
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: January 10, 2022 1 session		
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

Mark C. Perry

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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

Mark C. Perry

Mark C. Perry
Sole Public Arbitrator

01/13/2022

Signature Date

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January 13, 2022

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