

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michele Ann Misiti

Case Number: 21-01123

vs.

Respondent
John Thomas Financial

Hearing Site: New York, New York

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

The expungement hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Michele Ann Misiti: Scott Holcomb, Esq., Holcomb + Ward, LLP, Atlanta, Georgia.

Respondent John Thomas Financial did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: April 29, 2021.

Michele Ann Misiti signed the Submission Agreement: April 29, 2021.

Respondent John Thomas Financial did not submit a Statement of Answer or 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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1717528.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Respondent did not file a Statement of Answer or properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Panel on all issues submitted.

On October 1, 2021, Claimant advised that the customer in Occurrence Number 1717528 (“customer”) was served with the Statement of Claim and notice that he can participate in this matter. Claimant sent correspondence dated September 24, 2021 to the customer informing him of the request for expungement. Claimant requested that the customer contact him by October 1, 2021 if he would like to participate. UPS confirmed that the correspondence was delivered to the customer on September 27, 2021. The customer did not submit a response by the October 1, 2021 deadline.

The Panel conducted a recorded hearing by videoconference on September 20, 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 customer also did not participate in the expungement hearing. The Panel found that the customer had notice of the expungement request and did not submit a response.

The Panel 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 Panel noted that the dispute related to Occurrence Number 1717528 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings, exhibits, Claimant’s testimony, testimony of Respondent’s Chief Compliance Officer, and Claimant’s BrokerCheck® Report.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to Occurrence Number 1717528 from registration records maintained by the CRD for Claimant Michele Ann Misiti (CRD Number 1931272) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michele Ann Misiti 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The claim against Ms. Misiti was investigated and determined not to be factual. Claimant was not in a supervisory capacity at the time of the occurrence. Respondent’s Chief Compliance Officer testified that someone else was the Branch Office Supervisor for the period of time that the customer sustained losses that led to the dispute. The Chief Compliance Officer testified further that after Claimant became the Branch Office Manager, there was little she could do to rectify the losses sustained by the customer.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent John Thomas Financial is assessed the following:

Member Surcharge = \$ 2,000.00
Member Process Fee = \$ 3,850.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,150.00/session = \$ 1,150.00
Pre-Hearing Conference: August 24, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: September 20, 2021 1 session		
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Total Hearing Session Fees	= \$	2,300.00

The Panel has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

William E. Nuckel	-	Public Arbitrator, Presiding Chairperson
Ann C. Northern	-	Public Arbitrator
Allan N. Taffet	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

William E. Nuckel

William E. Nuckel
Public Arbitrator, Presiding Chairperson

10/07/2021

Signature Date

Ann C. Northern

Ann C. Northern
Public Arbitrator

10/07/2021

Signature Date

Allan N. Taffet

Allan N. Taffet
Non-Public Arbitrator

10/07/2021

Signature Date

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October 08, 2021

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