

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Breton Wayne Williams

Case Number: 21-01149

vs.

Respondent
NYLife Securities LLC

Hearing Site: Chicago, Illinois

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 Breton Wayne Williams (“Claimant”): Doctor Kennedy, Esq. and Chelsea Masters, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent NYLife Securities LLC (“Respondent”): Richard F. Lubarsky, Esq., Lubarsky Law Firm PLLC, White Plains, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 4, 2021.
Claimant signed the Submission Agreement: May 3, 2021.

Statement of Answer filed on or about: June 23, 2021.
Respondent signed the Submission Agreement: June 16, 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 refuted the basis for expungement for Occurrence Number 1112250 and took no position on Claimant’s expungement request for Occurrence Number 1190246. Respondent noted that this arbitration was filed more than six years after the occurrence or event giving rise to both customers’ complaints.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1112250 and 1190246 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that all forum and arbitrator 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 1, 2021, Claimant advised that the customers in Occurrence Numbers 1112250 and 1190246 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On September 7, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Notice. Claimant also filed a copy of the FedEx tracking information available for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on November 29, 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, refuted the basis for expungement for Occurrence Number 1112250 and took no position on Claimant’s expungement request for Occurrence Number 1190246. Respondent noted that this arbitration was filed more than six years after the occurrence or event giving rise to both customers’ complaints.

The Customers 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 occurrences in the CRD.

The Arbitrator noted that the disputes related to Occurrence Numbers 1112250 and 1190246 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s Exhibits, Respondent’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 Numbers 1112250 and 1190246 from registration records maintained by the CRD for Claimant Breton Wayne Williams (CRD Number 1845977) with the understanding that, pursuant to Notice to

Members 04-16, Claimant Breton Wayne Williams 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; and

The claim, allegation, or information is false.

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

Occurrence Number 1112250:

Claimant did not forge the customer’s signature as he lacked intent to defraud. The written and oral evidence proffered indicate that, to the contrary, Claimant took immediate action to inform the customer that he included her name on the Letter of Instruction and that his intent overall was to communicate her instructions with respect to the execution of the Section 1035 exchange with an abundance of caution and in a timely fashion. Should the disclosure remain on the Claimant’s record, under the circumstances proven during the hearing, such a disclosure would mislead the public.

Occurrence Number 1190246:

Respondent’s internal investigation of the customer’s claim conducted immediately following the filing of the claim in 2004, with respect to events that occurred in 1998, led it to conclude that there was insufficient evidence to support to claim. Further, the evidence presented establish that Claimant did not commit a misrepresentation. Finally, poor performance of an investment does not constitute a breach of duty by Claimant under the circumstances.

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
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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(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 @ \$1,150.00/session	= \$	1,150.00
Pre-Hearing Conference: August 25, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: November 29, 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

Maya Steinitz

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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

Maya Steinitz

Maya Steinitz
Sole Public Arbitrator

12/01/2021

Signature Date

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December 01, 2021

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