

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Stephen Scott Brown

Case Number: 21-01164

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith, 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

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Stephen Scott Brown: Craig Stein, Esq. and Nisha Wright, Esq., Stein & Stein, P.A., Palm Beach, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc.: Kathryn D. Perreault, Esq. and Joel Everest, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 5, 2021.

Stephen Scott Brown signed the Submission Agreement: May 4, 2021.

Statement of Answer filed by Respondent on or about: June 25, 2021.

Merrill Lynch, Pierce, Fenner & Smith, Inc. signed the Submission Agreement: June 25, 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 1624201, 1625215, and 1660222.

In the Statement of Answer, Respondent did not delineate a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge having read the pleadings and other materials filed by the parties.

On November 4, 2021, Claimant advised that the customers in Occurrence Numbers 1624201, 1625215, and 1660222 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded hearing by videoconference on January 14, 2022, 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 Customers did not participate in the expungement hearing. The Panel found that the Customers had notice of the expungement request and hearing.

On January 14, 2022, the Panel issued a post-hearing Order directing Respondent to file all documents that show what risks were disclosed to the Customers, with Claimant then having the opportunity to file a supplemental brief. On February 1, 2022, Respondent filed their response to the Panel’s Order. On February 15, 2022, Claimant filed his response to the Panel’s Order.

The Panel reviewed Claimant’s BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Panel reviewed the settlement documentation related to Occurrence Number 1625215, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel 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 Panel did not review the settlement documentation related to Occurrence Number 1660222 because no written settlement agreement was available. Pursuant to the testimony of Claimant, as well as the explanation of Respondent’s counsel as to Respondent’s practices with respect to negotiating and drafting settlement agreements, the Panel 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 Panel noted that the dispute related to Occurrence Number 1624201 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: Claimant's testimony, the explanation of Respondent's Counsel as to how settlement agreements are negotiated and drafted, documentary evidence, emails, and suitability forms.

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 Numbers 1624201, 1625215, and 1660222 from registration records maintained by the CRD for Claimant Stephen Scott Brown (CRD Number 1799847) with the understanding that, pursuant to Notice to Members 04-16, Claimant Stephen Scott Brown 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

All three occurrences (Occurrence Numbers 1624201, 1625215, and 1660222) involved the same products. To the extent the CRD entries can be understood to assert a sales practice violation by Claimant, all three Rule 2080(b)(1) grounds would apply. The unrebutted, credible evidence shows that no sales practice violation occurred, so that the claim is clearly erroneous and false, and that if any sales practice violation did occur it was not committed by Claimant. With the subject products, firm policy prohibited Claimant from explaining the product or completing transactions.

The credible and unrebutted testimony of Claimant established that he performed his duties properly. His testimony was borne out by the documentary evidence including emails and suitability forms. The subject investments were suitable for each of the customers, and the customers received and acknowledged risk disclosures. The Panel reviewed the risk disclosures and found them fulsome in their explanations of the risks of the product, and the evidence demonstrated that the customers received them and acknowledged reading them. The subject investments were a very small part of diversified portfolios.

The Panel notes that as to Occurrence Number 1624201 there was no settlement, and as to Occurrence Number 1660222, there was no document available to reflect the terms. However, counsel for Respondent was able to state that he had been involved with the negotiation and drafting of many settlement agreements for Respondent, including prior to and at the time of any settlements that might pertain to the subject occurrence numbers. None included any provision to prevent a customer or former customer from opposing an expungement request.

The evidence established all three of the possible grounds for expungement under Rule 2080(b)(1).

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:

Expungement 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 events giving rise to the disputes. 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 Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), 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: September 14, 2021 1 session		

One (1) hearing session on expungement request @ \$1,150.00/session		
Hearing: January 14, 2022 1 session	= \$	1,150.00

Total Hearing Session Fees	= \$	2,300.00
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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

Will Murphy	-	Public Arbitrator, Presiding Chairperson
William Kent Brown	-	Public Arbitrator
Tina Scott Polsky	-	Non-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.

Concurring Arbitrators' Signatures

Will Murphy

Will Murphy
Public Arbitrator, Presiding Chairperson

02/21/2022

Signature Date

William Kent Brown

William Kent Brown
Public Arbitrator

02/21/2022

Signature Date

Tina Scott Polsky

Tina Scott Polsky
Non-Public Arbitrator

02/22/2022

Signature Date

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February 22, 2022

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