

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Sanjay Rajiv Beach

Case Number: 21-01170

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Cleveland, Ohio

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 Sanjay Rajiv Beach (“Claimant”): Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Respondent”): Laura A. Pizzitola, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 5, 2021.
Claimant signed the Submission Agreement: May 4, 2021.

Statement of Answer filed on or about: June 24, 2021.
Respondent signed the Submission Agreement: June 24, 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 Number 2101952.

In the Statement of Answer, Respondent did not request any relief.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 12, 2021, Claimant advised that the customer in Occurrence Number 2101952 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The same day, Claimant filed correspondence from the Customer, dated August 27, 2021, supporting Claimant’s request for expungement.

The Arbitrator conducted a recorded, telephonic hearing on November 22, 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, took no position on 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.

As an accommodation to the Customer, Respondent reversed the sales at issue and made a trade adjustment, however, there was no settlement documentation related to Occurrence Number 2101952. The Arbitrator reviewed the correspondence to the Customer related to the trade adjustment and reversal of the sale, considered the amount of payment made related to reversal of the sales and trade adjustment, and noted that there was no additional settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s testimony, e-mail correspondence to/from the Customer, Claimant, and Respondent, and subsequent retention of the Customer’s account.

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 2101952 from registration records maintained by the CRD for Claimant Sanjay Rajiv Beach (CRD Number 2460337) with the understanding that, pursuant to Notice to Members 04-16, Claimant Sanjay Rajiv Beach 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 finding of fact:

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

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

Claimant’s testimony indicated the Customer account was discretionary so any allegation of unauthorized trading, by definition, is factually impossible. Explanatory correspondence with the Customer after the issue was raised satisfied the Customer, who remains a client of Claimant.

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) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: November 22, 2021 1 session

Total Hearing Session Fees = \$ 1,150.00

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

Tracy L. Allen

-

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

Tracy L. Allen

Tracy L. Allen
Sole Public Arbitrator

11/24/2021

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.

November 24, 2021

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