

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Patrick Christopher Lowe
Charlotte M. Lowe

Case Number: 21-01246

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Los Angeles, California

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 Persons vs. Member

REPRESENTATION OF PARTIES

For Claimants Patrick Christopher Lowe and Charlotte M. Lowe (collectively “Claimants”):
Robert Moses, Esq., Lax & Neville LLP, New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Patrick J. Mulligan,
Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 12, 2021.

Patrick Christopher Lowe signed the Submission Agreement: May 5, 2021.

Charlotte M Lowe signed the Submission Agreement: May 12, 2021.

Statement of Answer filed by Respondent on or about: June 15, 2021.

Respondent signed the Submission Agreement: June 15, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants 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 Claimants’ expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Expungement of the Complaints from Claimants' BrokerCheck® Reports and CRD records pursuant to FINRA Rules 2080 and 13805, on the basis that:
 - a. the allegations as to Claimants are clearly erroneous;
 - b. Claimants were not involved in any sales practice violation; and
 - c. the claims and allegations against them are false.
2. The Complaints bear the following Occurrence Numbers:
 - a. for Patrick Christopher Lowe: Occurrence Numbers 675244, 986159 and 1439441; and
 - b. for Charlotte M. Lowe: Occurrence Numbers 675348, 986160 and 1439440.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 14, 2021, the parties agreed to proceed with a single arbitrator on this matter.

On December 15, 2021, Claimants advised that the customers in Occurrence Numbers 675244, 675348, 986159, 986160, 1439441 and 1439440 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 5, 2022, so the parties could present oral argument and evidence on Claimants' request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

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 Claimants' BrokerCheck® Reports. 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 also reviewed the settlement documentation related to Occurrence Numbers 1439441 and 1439440, 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 Claimants did not contribute to the settlement amount.

The Arbitrator noted that the disputes related to Occurrence Numbers 675244, 675348, 986159 and 986160 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: the Statement of Claim; Claimants' exhibits; documents showing service of the notice

of the expungement hearing to the Customers; the settlement agreement; Claimants' BrokerCheck® Reports; Claimants' testimony; and oral arguments by Claimants' counsel.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 Numbers 675244, 986159 and 1439441 from registration records maintained by the CRD for Claimant Patrick Christopher Lowe (CRD Number 2745005) with the understanding that, pursuant to Notice to Members 04-16, Claimant Patrick Christopher Lowe must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Arbitrator also recommends the expungement of all references to Occurrence Number 675348, 986160 and 1439440 from registration records maintained by the CRD for Claimant Charlotte M. Lowe (CRD Number 2742540) with the understanding that, pursuant to Notice to Members 04-16, Claimant Charlotte M. Lowe 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:

Respondent took no position on Claimants' request for expungement. The incidents themselves occurred under previous broker-dealers with whom Claimants were employed, and records are not available. The Customers, though notified of the proceedings, did not contest or provide written commentary. Respondent produced no witnesses; neither did Solomon Smith Barney Inc. The occurrences are 10 years old and more; there are no recent charges on Claimants' BrokerCheck® Reports. The underlying complaints in Occurrence Numbers 675244, 675348, 986159 and 986160 were denied by the broker-dealers involved with no further action. Claimants stated that the "dot.com bubble" caused the early 2000 losses complained of, and that the recession of 2008 motivated the settlement. The complaint associated with Occurrence Numbers 1439441 and 1439440 was settled for less than 10 percent of the original demand amount and said to be a "business decision" (Claimants' words) in which Claimants took no part, and because one of the complaining customers had

cancer. There are no recent black marks on Claimants' CRD records. The sole other competent evidence was the unopposed testimony of Claimants, who denied all of the Customers' allegations. Both Claimants were deemed credible by the Arbitrator.

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 for Patrick Christopher Lowe	= \$	1,600.00
Initial Claim Filing Fee for Charlotte M. Lowe	= \$	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 24, 2021	1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: January 5, 2022	1 session	

Total Hearing Session Fees	= \$	2,300.00
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The Arbitrator has assessed the total hearing session fees jointly and severally to Claimants.

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

ARBITRATOR

Kirtley M. Thiesmeyer

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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

Kirtley M. Thiesmeyer

Kirtley M. Thiesmeyer
Sole Public Arbitrator

02/02/2022

Signature Date

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February 03, 2022

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