

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Fillers Bolen

Case Number: 21-01257

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Washington, D.C.

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 evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Michael Fillers Bolen: James P. Galvin, Esq., Galvin Legal, PLLC, Decatur, Georgia.

For Respondent Wells Fargo Clearing Services, LLC: Charlton Young, Esq., Wells Fargo Clearing Services, LLC, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: May 13, 2021.

Michael Fillers Bolen signed the Submission Agreement: May 13, 2021.

Statement of Answer filed by Respondent on or about: June 30, 2021.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: June 30, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of termination information on his Form U5 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: a finding that the Section 3 “Reason for Termination” and “Termination Explanation,” and any other applicable sections of Mr. Bolen’s Form U5, are defamatory in nature; expungement of the Section 3 “Reason for Termination” and the “Reason for Termination” be amended to “Voluntary,” or, in the alternative, “Other” on all of Mr. Bolen’s Forms U5 based on the defamatory nature of the information; expungement of the Section 3 “Termination Explanation,” or, in the alternative, amending the “Termination Explanation” language on all of Mr. Bolen’s applicable Forms U5 based on the defamatory nature of the information; amendment of any of Section 7F questions 1-3 that are marked as “Yes” to “No,” and expungement of all information from any related Disclosure Reporting Pages on all of Mr. Bolen’s applicable Forms U5 based on the defamatory nature of the information; and, all such other and further relief as is just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

The Panel conducted a recorded hearing by videoconference on February 11, 2022, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and opposed the request for expungement.

During the evidentiary hearing, Claimant made various ore tenus Motions to Bar under Rule 13308 of the Code of Arbitration Procedure (the “Code”), in which Claimant argued, among other things, that Respondent had not opposed, taken a position, or produced certain documentation as to Claimant’s request for expungement prior to the hearing, and thus should have been barred from raising them at the hearing. Respondent opposed the Motions to Bar and asserted that it had previously reserved its rights and defenses. After meeting in executive sessions, the Panel denied Claimant’s Motions to Bar.

On February 20, 2022, Claimant filed post-hearing submissions, which included, among other things: 1) a letter making allegations of Respondent’s inappropriate exhibit use/alteration and requesting a copy of the video recordings, and requesting sanctions and attorneys’ fees, 2) a letter withdrawing the request for the video recordings of the hearing and instead requesting the audio recordings be sent to the Panel, and enclosing a copy of an Order from a Georgia Superior Court granting a Claimant’s Motion to Vacate, 3) a letter advising that the audio recordings will suffice and that if a video recording exists that it be sent to the Panel, and 4) email correspondence between Claimant’s counsel and FINRA regarding Claimant’s post-hearing submissions.

On February 22, 2022, the Panel issued a directive in which it directed Respondent to file a response, if any, to the Claimant’s post-hearing submissions by no later than March 1, 2022.

On March 1, 2022, Respondent filed a response to Claimant’s post-hearing submissions.

On March 1 and 2, 2022, Claimant filed additional post-hearing submissions, which included, among other things: 1) a series of emails between Claimant's counsel and FINRA with respect to the dissemination of Claimant's February 20, 2022, submissions to the Panel, 2) a letter requesting that the audio recordings be sent to the Panel, and 3) Claimant's reply to Respondent's response to Claimant's post-hearing submissions.

On March 1 and 2, 2022, in accordance with the Panel's directives, FINRA published all of the parties' respective post-hearing submissions listed above, in addition to the audio recording of the February 11, 2022, expungement evidentiary hearing. On March 4, 2022, the Panel affirmed that it had reviewed the submissions.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The Award in this matter may be executed in counterpart copies.

AWARD

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

1. Claimant's request for relief is set forth in Claimant's Statement of Claim.

"WHEREFORE, Mr. Bolen respectfully requests the following relief: (1) A finding that the Section 3 "Reason for Termination" and "Termination Explanation," and any other applicable sections of Mr. Bolen's Form U5, are defamatory in nature; (2) Expungement of the Section 3 "Reason for Termination" and the "Reason for Termination" amended to "Voluntary," or, in the alternative, "Other" on all of Mr. Bolen's Form U5s based on the defamatory nature of the information; (3) Expungement of the Section 3 "Termination Explanation," or, in the alternative, amending the "Termination Explanation" language on all of Mr. Bolen's applicable Form U5s based on the defamatory nature of the information; (4) Amendment of any of Section 7F questions 1-3 that are marked as "Yes" to "No," and expungement of all information from any related Disclosure Reporting Pages on all of Mr. Bolen's applicable Form U5s based on the defamatory nature of the information; and (5) All such other and further relief as is just and equitable."

Claimant's Statement of Claim states with regard to client account statements that Claimant "acknowledges and now understands that the Firm's policy prohibited statements from being mailed to his office...":

"Subsequently, Mr. Bolen was discharged by Wells Fargo because of the self-reported statement [the underlying Customer] made to him. The formal basis of his discharge by Wells Fargo is premised on the fact that [the underlying Customer]'s account statements were being sent to Mr. Bolen's office. There was no malintent or bad behavior on Mr. Bolen's part. As is evident from the letter of authorization executed by [the underlying Customer], he was literally doing what the client requested because the client was afraid of the statements being stolen from his mailbox. Mr. Bolen acknowledges and now understands that the Firm's policy prohibited statements from being mailed to his office,

but it was at the client's request based on the client's legitimate reason and Mr. Bolen was unaware of the Firm's policy at the time. While having the statement mailed to his office was a violation (though unknown to Mr. Bolen at the time) of Wells Fargo's policies, it was at the client's request and intended to protect the client...."

Claimant addressed the policy violation in his Comment on his BrokerCheck Report:

"I WAS TOLD I VIOLATED A FIRM POLICY BY HAVING A CLIENTS STATEMENTS MAILED TO MY BRANCH OFFICE. I HAD AN LOA SIGNED BY THE CLIENT INSTRUCTING ME TO MAIL THE STATEMENTS TO THE BRANCH OFFICE. THE CLIENT WANTED TO AVOID PEOPLE FROM DISCOVERING THE NATURE AND/OR AMOUNT OF HIS FINANCIAL HOLDINGS. THE CLIENT WAS WARY OF HAVING MAIL SENT TO HIS HOUSE AT THE TIME. THE CLIENT ALLEGED THAT HIS EX WIFE WAS COMMITTING FRAUDULENT ACTS SUCH AS USING HIS CREDIT CARDS AND MAKING INQUIRIES IN HIS BANK ACCOUNTS WITHOUT PROPER AUTHORIZATION. I MAILED THIS LOA TO THE NEW YORK STOCK EXCHANGE AFTER MY TERMINATION. NO CASE WAS EVER OPENED BY THE NYSE."

Note that the only letter of authorization (LOA) presented as evidence in this Arbitration is a letter from the client dated January 26, 2003, which is after the change of address for mailing the client account statements and after Claimant's employment was terminated on January 22, 2003.

Based upon the record in this matter, there is not a basis for finding that Claimant's record in the CRD system contains inaccurate and defamatory statements regarding the discharge of Claimant by Respondent. In fact, Claimant had the client's account statements sent to Claimant's office instead of to the client's address, which Respondent determined was a violation of the Respondent's policy and, for that reason, Claimant was discharged by Respondent in January 2003.

Accordingly, the Panel denies Claimant Michael Fillers Bolen's (CRD Number 2334043) claim, as set forth in Claimant's Statement of Claim, for expungement and/or amendment of Claimant's record (Occurrence Number 1140585) in FINRA's Central Registration Depository ("CRD") system.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, 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

*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 Wells Fargo Clearing Services, LLC 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 7, 2021 1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$ 1,150.00
Hearing: February 11, 2022 1 session	

Total Hearing Session Fees	= \$ 2,300.00
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The Panel has assessed \$1,150.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,150.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Patricia H. Latham	-	Public Arbitrator, Presiding Chairperson
Douglas Earl McLaren	-	Public Arbitrator
Thomas David Hudak	-	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

Patricia H. Latham

Patricia H. Latham
Public Arbitrator, Presiding Chairperson

03/11/2022

Signature Date

Douglas Earl McLaren

Douglas Earl McLaren
Public Arbitrator

03/11/2022

Signature Date

Thomas David Hudak

Thomas David Hudak
Non-Public Arbitrator

03/11/2022

Signature Date

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March 11, 2022

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