

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Anthony Arch III

Case Number: 21-01264

vs.

Respondent
Equitable Advisors, LLC

Hearing Site: San Francisco, 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 Person vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Anthony Arch III (“Claimant”): Brian Luther, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent Equitable Advisors, LLC (“Respondent”): Ana R. Hartman, Esq., Gordon Rees Scully Mansukhani, LLP, San Diego, California.

CASE INFORMATION

Statement of Claim filed on or about: July 1, 2021.

Claimant signed the Submission Agreement: May 13, 2021.

Statement of Answer filed by Respondent on or about: July 6, 2021.

Respondent signed the Submission Agreement: July 12, 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 1354524, 1886834, 2084069, and 302045 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous, and FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false.

In the Statement of Answer, Respondent requested all costs and 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 June 24, 2021, the parties agreed to proceed with a single arbitrator on this matter.

On November 9, 2021, Claimant advised that the customers in Occurrence Numbers 1354524 (Mr. B), 1886834 ("Ms. M"), 2084069 ("Ms. P"), and 302045 ("Mr. C"), collectively the "Customers", were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On November 19, 2021, Ms. M filed a letter opposing Claimant's request for expungement.

The Arbitrator conducted a recorded hearing by videoconference on December 8, 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, did not oppose the request for expungement.

Ms. M also participated in the expungement hearing and opposed the expungement request. Mr. B, Ms. P, and Mr. C 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 also reviewed the settlement documentation related to Occurrence Number 1354524, 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 Claimant did not contribute to the settlement amount.

The Arbitrator noted that the disputes related to Occurrence Numbers 1886834, 2084069, and 302045 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: pleadings; Claimant's exhibits; Claimant's BrokerCheck® Report; Claimant's testimony; and Ms. M'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 1354524, 1886834, 2084069, and 302045 from registration records maintained by the CRD for Claimant Anthony Arch III (CRD Number 1362479) with the understanding that, pursuant to Notice to Members 04-16, Claimant Anthony Arch III 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:

Occurrence Number 1354524

(Rule 2080(b)(1)(A), Erroneous) Based on testimony and documentary evidence in early 2000, Mr. B was already a client of Respondent with another agent. He already held several annuity contracts at that time. In early 2005, Mr. B requested that Claimant purchase three variable annuity contracts to add to his investment portfolio. Under the "suitability" section of the form, he noted that he had received the prospectus, that the purchase was in accordance with his investment objectives, that he had other existing life insurance and annuities, that his time horizon was greater than 9-years, and that his risk tolerance was conservative/moderate. Based on advice Mr. B received from his personal trainer, on May 3, 2007, he complained to Respondent that his Variable Annuity contracts were not suitable. Mr. B did not specify any damages. It is a clearly erroneous charge because the annuities purchase was suitable to the investor's needs and at his request; Claimant believed they were suitable; and there were no material misrepresentations to their suitability. Mr. B acknowledged this at the time. Therefore, the claim is clearly erroneous and should be expunged.

(Rule 2080(b)(1)(C), Allegation is false) Including the facts and testimony in the previous paragraph, Mr. B was an experienced investor in annuities having held annuities before coming to Claimant as a client. Annuities were suitable based on his risk assessment and goals. It was only after his personal trainer advised him differently that he felt them to be unsuitable. Therefore, the claim is false and should be expunged.

Occurrence Number 1886834

(Rule 2080(b)(1)(A), Erroneous) Based on the testimony of Claimant and Ms. M, and documentary evidence, in 2012, Claimant met Ms. M through her domestic partner, whom Claimant had known since the late 1990's. In April 2014, Claimant met with Ms. M to discuss her retirement objectives and her risk tolerance. Ms. M indicated that she was willing to accept a certain amount of risk if there were some types of built-in guarantees. In November 2014, Claimant and Ms. M discussed the different versions of a Retirement Cornerstone contract available, with either a 4-year, 7-year, or 9-year contractual surrender charge period. Claimant recommended the 7-year series because it had the lowest long-term expenses if she was not planning to move the account before the seven years. Ms. M reiterated that this was her retirement asset and she would never touch it. Ms. M completed a Risk Tolerance profile which indicated a "Moderate-plus" risk profile and executed the application. The Retirement Cornerstone contract was issued and sent to her directly. From 2015 to 2016, Claimant conducted quarterly account reviews with Ms. M using the Retirement Cornerstone performance reports for her account.

In 2016, Ms. M began speculating in real estate with other sources of money at her disposal. On May 22, 2016, Claimant received an e-mail from Ms. M stating that she had an "opportunity" with another investment and to expect her account to be transferred. Claimant immediately called to ask Ms. M if the account transfer was worth paying the surrender charge. She immediately replied that she was not changing her mind, and if necessary, she would "eat" the amount of the charge, but also asked if there was anything Claimant could do administratively to help her avoid the surrender charge. There wasn't anything Claimant could do to avoid the surrender charge. Ms. M then filed a complaint that the annuity investment was unsuitable even though it was within her risk tolerance, the surrender charge was completely explained to her and she did not question the annuity for several years. Therefore, the complaint is clearly erroneous and should be expunged.

(Rule 2080(b)(1)(C), Allegation is false) Including the facts and testimony in the previous paragraphs, Ms. M complained that the annuity was unsuitable, but in reality, her issue was the surrender charge that she was completely advised and aware of when she entered into the annuity contract. Therefore, the complaint is false and should be expunged.

Occurrence Number 2084069

(Rule 2080(b)(1)(A), Erroneous) Based on testimony and documentary evidence, Ms. P became Claimant's client in early 1993 when she was married to Mr. M. In November 2012, they decided to utilize the Owner-401K program to reduce their administrative fees. They were familiar with Equivest annuities and how they functioned, so Claimant recommended the Retirement Cornerstone accounts. As they were already familiar with surrender fees from their previous investments in annuities, they opted for the shorter declining surrender period schedule in L-class shares (4 years instead of 7 years), which was consistent with their retirement timeline objectives. They signed disclosure forms acknowledging the 4-year surrender charge on November 10, 2012. They divorced in 2018.

Ms. P finalized her QDRO settlement transfer into her Retirement Cornerstone account. Claimant strongly recommended that she re-review the contract, including its features and surrender fees, as well as to make sure her allocations matched her objectives and risk tolerance. Ms. P dismissed those recommendations at that time and signed the request for ownership change. Later, she wanted to transfer her accounts to a friend of her son's, wanting to distance herself completely from her past life. Facing surrender charges, she felt that the annuities were unsuitable and so, complained even though she knew of the surrender fees and that the annuities were well within her risk tolerance. Therefore, the claim is clearly erroneous and should be expunged.

(Rule 2080(b)(1)(C), Allegation is false) Including the facts and testimony in the previous paragraph, Ms. P knew about and accepted the surrender charges. She also had held other annuities before this one. Therefore, the allegation of unsuitability is false. She did continue to hold the annuity until there were no more surrender charges and then moved the fund to her son's friend's firm. Therefore, the claim of unsuitability is false and should be expunged.

Occurrence Number 302045

(Rule 2080(b)(1)(A), Erroneous) Based on the testimony of Claimant and documentary evidence, Mr. C became a client of Claimant's in the late 1980's. In 1989, Mr. C purchased a Variable Life Insurance policy with Claimant and Claimant's partner. Prior to the purchase, Claimant and his partner explained the features and fees associated with the policy, and Mr. C acknowledged the disclosure of the fees and risks of the investment on his account disclosure forms. Ten years later, after becoming terminally ill, Mr. C filed a complaint with Respondent alleging that Claimant and his partner had misrepresented the Variable Life Insurance policy he had purchased in 1989. It is factually impossible and false that Claimant or his partner made any misrepresentations to Mr. C regarding his Variable Life Insurance Policy. In fact, Claimant explained the features and fees associated with the policy, and Mr. C acknowledged the disclosure of the fees and risks of the investment on his account disclosure forms. Mr. C held the policy for nine years with no complaints. It was only after he reported his illness that he complained in 1998. Respondent closed Mr. C's complaint with no action taken, finding no evidence that the policy was misrepresented and no basis to alter the terms of the policy. There is no basis for Mr. C's complaint. It is clearly erroneous and should be expunged.

(Rule 2080(b)(1)(C), Allegation is false). Including the facts and testimony in the previous paragraphs, there was no evidence presented that Claimant breached his fiduciary duty to Mr. C or made any misrepresentations regarding Mr. C's policy. Claimant and his partner explained the features and fees associated with the policy, and Mr. C acknowledged the disclosure of the fees and risks of the investment on his account disclosure forms. Supporting the falsity of the complaint is the fact that Mr. C held the policy for nine years with no complaints and only complained in 1998 after he reported his diagnosis. Therefore, the claim is false and should be expunged.

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
--------------------------	--------------

**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: September 7, 2021 1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	=\$ 1,150.00
Hearing: December 8, 2021 1 session	

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

Kenneth Paul Strongman

-

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

Kenneth Paul Strongman

Kenneth Paul Strongman
Sole Public Arbitrator

12/22/2021

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.

December 22, 2021

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