

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Christian Brad Risenmay

Case Number: 21-01267

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: San Diego, 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.

REPRESENTATION OF PARTIES

For Claimant Christian Brad Risenmay (“Claimant”): Jake L. Jacobsen, Esq., HLBS Law, Westminster, Colorado.

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 14, 2021.

Claimant signed the Submission Agreement: May 14, 2021.

Statement of Answer filed by Respondent on or about: May 28, 2021.

Respondent signed the Submission Agreement: May 28, 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:

1. Expungement of Occurrence Numbers 1479435 and 1499633 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;
2. Expungement of Occurrence Numbers 1479435 and 1499633 from Claimant's CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Numbers 1479435 and 1499633; and
4. Any and all other relief that the Arbitrator deems just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

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

On September 22, 2021, Claimant filed an obituary and the death record from Lexis Nexis database reflecting that the customer in Occurrence Number 1499633 ("Mr. D") is deceased and therefore Claimant was unable to serve the Statement of Claim and notice of the date and time of the expungement hearing.

On September 22, 2021, Claimant advised that the customers in Occurrence Number 1479435 ("Mr. and Mrs. S") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On September 23, 2021, Claimant filed an Affidavit confirming that the Mr. and Mrs. S were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. D, and Mr. and Mrs. S are collectively referred to as "Customers".

The Arbitrator conducted a recorded, telephonic hearing on October 18, 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.

Mr. and Mrs. S did not participate in the expungement hearing. The Arbitrator found that the Mr. and Mrs. S 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 1479435, 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 dispute related to Occurrence Number 1499633 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; Claimant's BrokerCheck® Report; Claimant's testimony; Respondent's Statement of Answer with respect to Occurrence Number 1479435; and exhibits.

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 1479435 and 1499633 from registration records maintained by the CRD for Claimant Christian Brad Risenmay (CRD Number 4534437) with the understanding that, pursuant to Notice to Members 04-16, Claimant Christian Brad Risenmay 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 1479435

Mr. and Mrs. S filed a complaint in arbitration alleging that Claimant had recommended unsuitable investments. According to the complaint, the portfolio that Claimant recommended was unsuitable because of the amount of equity in it. Because of the amount of equity, the value of the portfolio declined by more than 10% when the stock market crashed in 2008. This decline was critical to the allegation of unsuitability because according to Mr. and Mrs. S's complaint, they had informed Claimant that they could not tolerate more than a 10% decline in value, and Claimant had agreed to prevent it.

To achieve their growth and income goals, Mr. and Mrs. S had to invest in the at-risk capital market. They could not limit themselves to guaranteed investments such as certificates of deposit. In that market, no one could prevent a portfolio from declining in

value more than 10%. No reasonable person would find such a promise credible. An experienced investor, such as Mr. S, who had invested in equities for years before placing accounts with Claimant, would certainly not find such a promise credible. I do not believe that Claimant made any such promise. Nor do I believe that Mr. and Mrs. S asked him to make it. This explains why (1) Mr. and Mrs. S remained clients of Claimant after their portfolio declined in value by more than 10% in early 2008, (2) they declined to change their portfolio prior to Claimant's move from Respondent to Morgan Stanley, and (3) they followed Claimant to Morgan Stanley. Absent the promise, the basis for Mr. and Mrs. S's allegation of unsuitability disappears. In any event, holding more debt and less equity in their portfolio would not have insulated Mr. and Mrs. S's portfolio from the risk that their portfolio might lose more than 10% of its value. The allegation of unsuitability is false and clearly erroneous and should be expunged.

Occurrence Number 1499633

Mr. D, an experienced investor, sought tax-free income. Claimant presented several investment options to Mr. D, and after discussing the advantages and disadvantages of each, recommended the Franklin California Tax-Free Income Fund ("Fund"). The Fund had performed well for decades under the direction of an experienced, well-regarded management team. Moreover, Mr. D could invest in the Fund at net asset value, that is without having his investment reduced by an up-front load. The Fund was well suited to someone with Mr. D's investment profile and tax-free income goal.

Nevertheless, when the value of the Fund declined in the days that followed the investment, Mr. D requested that it be "cancelled" and his money refunded. When Respondent declined this request, Mr. D complained, alleging that some unspecified misrepresentation was made and that an unsuitable investment had been recommended. Apparently, the sole purported grounds for the allegations were the decline in value and Respondent's refusal to "cancel" Mr. D's investment and refund his money. But neither the decline in value nor the refusal to cancel the investment and provide a refund provide any basis for an allegation of misrepresentation or of unsuitability. These allegations are false and clearly erroneous. They 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
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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(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 25, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: October 18, 2021	1 session	
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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

Mark R. Lee

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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

Mark R. Lee

Mark R. Lee
Sole Public Arbitrator

11/02/2021

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 03, 2021

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