

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Theodore James Fischer

Case Number: 21-01275

vs.

Respondent

Charles Schwab & Co., 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 Person vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Theodore James Fischer: Brian Luther, JD, FA Expungement, LLC, Denver, Colorado.

For Respondent Charles Schwab & Co., Inc.: Christopher F. Robertson, Esq. and Katherine R. Moskop, Esq., Seyfarth Shaw LLP, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: May 16, 2021.

Claimant signed the Submission Agreement: May 16, 2021.

Statement of Answer filed by Respondent on or about: July 9, 2021.

Respondent signed the Submission Agreement: July 9, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of Form U4 termination entry based on the defamatory nature of the entry in Claimant's Central Registration Depository ("CRD") records.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1214942 from Claimant's CRD record, pursuant to the finding that the claims, allegations, and information are defamatory and defamatory per se, that the claims, allegations, and information are factually impossible and clearly erroneous, and that the claims, allegations, and information are false.

In the Statement of Answer, Respondent requested:

1. Claimant take nothing by any of his claims;
2. Claimant be assessed all arbitration fees and costs; and
3. Such other relief to which Respondent is justly entitled.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 8, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the FINRA Code of Arbitration ("Code"). On September 27, 2021, Claimant filed a response to the motion. On October 4, 2021, Respondent filed a reply in support of the motion. On November 30, 2021, the Panel heard oral arguments on the Motion to Dismiss pursuant to Rule 13206 and deferred the decision on the motion.

On January 10, 2022, Respondent filed a Motion to Dismiss pursuant to Rule 13504 of the Code. On February 15, 2022, Claimant filed a response to the motion. On February 18, 2022, Respondent filed a reply in support of the motion. During the expungement hearing, after conclusion of Claimant's case in chief, Respondent reset and resubmitted the Motion to Dismiss pursuant to Rule 13504. The Panel hereby denies the previously deferred Motion to Dismiss pursuant to Rule 13206. The Panel hereby grants the Motion to Dismiss pursuant to Rule 13504 on the grounds that:

- The U4 Termination Report did not contain any inaccurate or defamatory statements;
- The U4 Termination Report was not prepared by, submitted, or filed by Respondent; and
- On the basis of laches – that Claimant had known about the U4 Termination Report in 2004, yet waited about 17 years before filing his petition for expungement. During those 17 years, relevant witnesses passed away or otherwise became unavailable, and relevant documents underlying the activity that led to the U4 Termination Report were lost due to the passage of time.

AWARD

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

Claimant's claims are dismissed in their entirety with prejudice pursuant to Rule 13504(b) of the Code.

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 that employed the associated person at the time of the event 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 Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Panel, including a pre-hearing conference with the Panel, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,150.00/session = \$ 2,300.00
Pre-Hearing Conferences: October 14, 2021 1 session
November 30, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: February 22, 2022 1 session

Total Hearing Session Fees = \$ 3,450.00

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.

ARBITRATION PANEL

Stephen Howard Marcus	-	Public Arbitrator, Presiding Chairperson
Michael Shimokaji	-	Public Arbitrator
Tim James O'Keefe	-	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

Stephen Howard Marcus

Stephen Howard Marcus
Public Arbitrator, Presiding Chairperson

03/02/2022

Signature Date

Michael Shimokaji

Michael Shimokaji
Public Arbitrator

02/28/2022

Signature Date

Tim James O'Keefe

Tim James O'Keefe
Non-Public Arbitrator

02/28/2022

Signature Date

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March 02, 2022

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