

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Stephen Ross Biesinger

Case Number: 21-01307

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 Stephen Ross Biesinger (“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 19, 2021.

Claimant signed the Submission Agreement: May 19, 2021.

Statement of Answer filed by Respondent on or about: June 7, 2021.

Respondent signed the Submission Agreement: June 7, 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 Number 1479439 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 Number 1479439 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 Number 1479439; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested any potential request for damages be denied.

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 29, 2021, Claimant advised that the customers in Occurrence Number 1479439 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On October 4, 2021, Claimant filed an Affidavit confirming that the 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 October 26, 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.

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 Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1479439, 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.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's BrokerCheck® Report; Respondent's

Statement of Answer; Respondent's Statement of Answer to the Customer complaint; and testimony provided by Claimant at the expungement hearing.

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 Number 1479439 from registration records maintained by the CRD for Claimant Stephen Ross Biesinger (CRD Number 4689955) with the understanding that, pursuant to Notice to Members 04-16, Claimant Stephen Ross Biesinger 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:

The Customers filed a complaint in arbitration alleging that Claimant had recommended unsuitable investments. According to their 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 the Customers' complaint, they had informed Claimant that they could not tolerate more than a 10% decline in value and Claimant had agreed to prevent it.

In order to achieve their growth and income goals, the Customers 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 one of the Customers, who had invested in equities for years before placing accounts with Claimant, would certainly not find such a promise credible. The Arbitrator does not believe that Claimant made any such promise. Nor does the Arbitrator believe that the Customers asked him to make it. This explains why:

- 1) the Customers remained clients of Claimant after their portfolio declined in value by more than 10% in 2008;
- 2) the Customers declined to change their portfolio prior to Claimant's move from Respondent to Morgan Stanley; and

3) the Customers followed Claimant to Morgan Stanley.

Absent the promise to prevent a decline in portfolio value of more than 10%, the basis for the Customers' allegation of unsuitability disappears. In any event, holding more debt and less equity in their portfolio would not have insulated the Customers' portfolio from the risk that the portfolio might lose more than 10% in value. The allegation of unsuitability is false and clearly erroneous 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:

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|--------------------------|------|----------|
| 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 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:

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| 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:

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|---|-----------|----------|
| One (1) pre-hearing session with a single Arbitrator @ \$1,150.00/session | = \$ | 1,150.00 |
| Pre-Hearing Conference: September 7, 2021 | 1 session | |

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|---|-----------|----------|
| One (1) hearing session on expungement request @ \$1,150.00/session | = \$ | 1,150.00 |
| Hearing: October 26, 2021 | 1 session | |

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| Total Hearing Session Fees | = \$ | 2,300.00 |
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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

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November 02, 2021

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