

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Shannon McNairy Freeland

Case Number: 21-01308

vs.

Respondents
Equitable Advisors, LLC
J.P. Morgan Securities, LLC

Hearing Site: Seattle, Washington

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. Members

REPRESENTATION OF PARTIES

For Claimant Shannon McNairy Freeland: Dochter Kennedy, MBA, J.D. and Samantha Pastor, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Equitable Advisors, LLC (“Equity Advisors”): Michael J. Biondi, Esq., Equitable, New York, New York.

For Respondent J.P. Morgan Securities, LLC (“J.P. Morgan”): Saied R. Quadri, Esq., Keesal, Young & Logan, Long Beach, California.

Hereinafter, Equity Advisors and J.P. Morgan are collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: May 19, 2021.

Amended Statement of Claim filed on or about: January 21, 2022.

Claimant signed the Submission Agreement: May 20, 2021.

Statement of Answer filed by Equity Advisors on or about: July 7, 2021.

Equitable Advisors signed the Submission Agreement: July 7, 2021.

Statement of Answer filed by J.P. Morgan on or about: July 1, 2021.

J.P. Morgan signed the Submission Agreement: June 25, 2021.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In its Statement of Answer, Equitable Advisors took no position on Claimant’s expungement request and denied any allegations of wrongdoing made in the Statement of Claim.

In its Statement of Answer, J.P. Morgan took no position on Claimant’s expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1445314 and 1816135 from her CRD record, 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 1445314 and 1816135 from her CRD record, 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 1445314 and 1816135; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In its Statement of Answer, Equitable Advisors requested:

1. To the extent required to participate in the proceedings, costs of the proceeding; and
2. An order that all costs of this proceeding, including forum fees, be assessed against Claimant.

In its Statement of Answer, J.P. Morgan made no specific request for relief.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 7, 2021, the parties agreed to proceed with a single arbitrator on this matter.

On November 23, 2021, Claimant filed an obituary and the death record from Lexis Nexis database reflecting that the customer in Occurrence Number 1445314 (“Ms. T”) 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 that same day, Claimant advised that the customer in Occurrence Number 1816135 (“Mr. S”) was served with the Statement of Claim and notice of the date and time of the expungement hearing. On November 29, 2021, Claimant filed an Affidavit confirming that Mr. S was served with the Statement of Claim and notice of the date and time of the expungement hearing.

On January 21, 2022, Claimant filed unopposed motion to amend Statement of Claim. The Arbitrator hereby grants the motion to amend Statement of Claim.

The Arbitrator conducted a recorded, telephonic hearing on January 27, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and as stated in their respective Statements of Answer, took no position on the request for expungement.

Mr. S did not participate in the expungement hearing. The Arbitrator found that Mr. 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 has not previously ruled on expungement of the same occurrences in the CRD.

The Arbitrator reviewed the settlement documentation related to Occurrence Number 1445314, 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 request for expungement. The Arbitrator also noted that Claimant contributed to the settlement. Expungement is still warranted as Claimant's contribution to the settlement amount was made out of her errors and omissions insurance and the contribution to the settlement was to avoid the cost of continued litigation.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1816135, 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 request for expungement and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: exhibits and Claimant'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 1445314 and 1816135 from registration records maintained by the CRD for Claimant Shannon McNairy Freeland (CRD Number 5576660) with the understanding that, pursuant to Notice to Members 04-16, Claimant Shannon McNairy Freeland 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 finding of fact:

The expungement would have no material adverse effect on investor protection, the integrity of the CRD system or regulatory requirements.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Occurrence Number 1445314

The claim here is that Claimant gave Ms. T inaccurate information causing her to incur a penalty. Claimant admits that to be true. Thus, the claim is not impossible, erroneous, or false. For her part, Claimant received misinformation in a phone call from the Public Employee’s Retirement System and argues that no intentional misrepresentation was made but she nonetheless provided wrong information which she has admitted. However, this violation occurred very early in her career while still under the guidance of her supervisor, who would be expected to counsel her to assure that the information was correct. The fault lies with the supervisor. Thus, I find expungement would have no material adverse effect on investor protection (Rule 2080(b)(2)(B)) and award expungement relief as to Occurrence Number 1445314.

Occurrence Number 1816135

Mr. S’ complaint alleges: failure to disclose fees, unsuitability, and failure to follow instructions. Prior to purchase, Mr. S had been provided with a prospectus which disclosed all fees as well as having the fees explained by Claimant. I find the fees had been disclosed and the allegation is false.

Suitability is determined at the time of purchase. The allegation is false as Black Rock Fund was suitable to Mr. S at the time of purchase as Mr. S represented that he intended to hold the funds for longer than three years. I find the investment was suitable.

As for failing to follow instructions, per Exhibit 26, email dated August 5, 2015, Mr. S requested liquidation on August 4, 2015 but, per Exhibit 25, the trade was not executed until August 6, 2015. Claimant’s policy, stated on each of her email, is that trades will not be executed based on an email but must have an oral confirmation. Claimant does not recall, and apparently has no record, of when she discussed the trade orally with Mr. S but testified that she always follows up on emails with a phone call. While it was too late in the day on August 4, 2015 to enact the trade, all day on August 5, 2015 was available but the trade did not occur until August 6, 2015. Further, since the settlement was calculated based on change of market value, the preponderance of the evidence is that Claimant did not follow instructions as she did not enact the trade on the August 5, 2015.

The emails sent by Mr. S were strongly worded for which he later apologized. Clearly, he was upset and that may have been a factor in the failure to execute the trade on August 5, 2015. At the very least, Claimant would be well advised in the future to keep records of oral trade requests.

The disclosure in the BrokerCheck report contains three allegations: failure to disclose fees, suitability, and failure to follow instructions. I find the first two are not supported by the evidence but the preponderance of the evidence is that the failure to follow instructions is supported. However, absent expungement, the BrokerCheck report is misleading as the investing public will believe Claimant had three violations when in fact there was only one. This would mislead the public and for this reason, I find expungement would have no material adverse effect on investor protection (Rule 2080(b)(2)(B)) and award expungement relief as to Occurrence Number 1816135.

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 parties, Equitable Advisors and J.P. Morgan are each 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 23, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: January 27, 2022	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

David William Hickman

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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

David William Hickman

David William Hickman
Sole Public Arbitrator

02/10/2022

Signature Date

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February 10, 2022

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