

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Damon K. Slepian

Case Number: 21-01316

vs.

Respondent
Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: Philadelphia, Pennsylvania

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 Damon K. Slepian: Docthor Kennedy, MBA, J.D., and Harris Freedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Katelyn H. Wilson, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

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

Damon K. Slepian signed the Submission Agreement: May 19, 2021.

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

Merrill Lynch, Pierce, Fenner & Smith Incorporated 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1054345 and 1478430 and any and all other relief that the Arbitrator deems just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated July 14, 2021, the parties agreed, pursuant to Rule 13401(c) of the Code of Arbitration Procedure (“Code”), to proceed with a single arbitrator for this matter.

On January 10, 2022, Claimant advised that the customer in Occurrence Number 1478430 (“Customer M”) was served with the Statement of Claim and notice of the date and time of the expungement hearing and, that Claimant was unable to serve the customer related to Occurrence Number 1054345 (“Customer S”) since Customer S is deceased. Therefore, Customer S was not provided with a copy of the Statement of Claim and did not participate in the expungement hearing. On January 17, 2022, Claimant filed an Affidavit confirming that Customer M was 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 February 7, 2022, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

Customer M also did not participate in the expungement hearing. The Arbitrator found that Customer M 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 1478430, 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 1054345 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: Claimant’s BrokerCheck® Report, the pleadings, Claimant’s testimony, and the 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 Number 1054345 from registration records maintained by the CRD for Claimant Damon K. Slepian (CRD Number 2404282) with the understanding that, pursuant to Notice to Members 04-16, Claimant Damon K. Slepian 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 claim, allegation, or information is false.

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

The customer alleged that the advice provided by Claimant was not appropriate for her age. This allegation is clearly false. Claimant's advice was consistent with the customer's investor profile and in accordance with her specific request for a growth investment. This growth-oriented investment represented only 3.6% of the customer's portfolio and did not materially change the conservative makeup of the portfolio while adding a small growth component as the customer requested. Claimant received no compensation for the transaction.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1478430 from registration records maintained by the CRD for Claimant Damon K. Slepian (CRD Number 2404282) with the understanding that, pursuant to Notice to Members 04-16, Claimant Damon K. Slepian 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The customer's claims of misrepresentation and unsuitable investment recommendations are clearly false. Claimant testified at the hearing and stated in his Statement of Claim that he explained the details of the recommended investments to the customer and

provided written materials pertaining to the investments. The customer acknowledged her understanding of the details and authorized the investments. Investment recommendations were made in accordance with the customer's risk profile which changed several times during the business relationship with Claimant and specific requests that were made. The customer claimed damages of \$500,000.00 but settled for \$22,500.00, a fraction of the amount sought.

3. 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 that employed the associated person at the time of the events 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 9, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: September 7, 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

Louis P. Wagman

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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

Louis P. Wagman

Louis P. Wagman
Sole Public Arbitrator

02/09/2022

Signature Date

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February 10, 2022

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