

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Daniel Timothy O'Connell

Case Number: 21-01323

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: New York, New York

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 Daniel Timothy O'Connell: Docthor Kennedy, MBA, J.D., and Chelsea Masters, Esq., AdvisorLaw LLC, Westminster, Colorado.

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

CASE INFORMATION

Statement of Claim filed on or about: May 20, 2021.

Daniel Timothy O'Connell signed the Submission Agreement: May 20, 2021.

Statement of Answer filed by Respondent on or about: July 12, 2021

Merrill Lynch, Pierce, Fenner & Smith Inc. 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.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 974493, 1361858, and 1514831; deletion of all Disclosure Reporting Pages accompanying the occurrences; and any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 27, 2021, the parties filed a joint request to proceed with a one-person arbitration panel pursuant to FINRA Rule 13401(c).

On October 19, 2021, Claimant advised that one of the customers in Occurrence Number 974493 and the customer in Occurrence Number 1514831 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing. On October 19, 2021, Claimant advised that one of the customers in Occurrence Number 974493 and the customer in Occurrence Number 1361858 are now deceased and provided proofs that the customers passed away on July 4, 2008 and October 23, 2013, respectively. On October 25, Claimant filed an affidavit 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 November 22, 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.

On November 19, 2021, the customer in Occurrence Number 1514831 filed a written statement opposing the expungement request.

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 noted that the disputes related to Occurrence Numbers 974493, 1361858, and 1514831 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; the exhibits; Respondent’s investigations of the customer complaints; Claimant’s BrokerCheck® Report, 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 Number 974493 from registration records maintained by the CRD for Claimant Daniel Timothy O'Connell (CRD Number 1283449) with the understanding that, pursuant to Notice to Members 04-16, Claimant Daniel Timothy O'Connell 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 factually impossible or clearly erroneous.

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

The customers were receiving 38 separate statements in one envelope. Unaware that Respondent changed its policy, the customers filed a complaint when they received their next statements and an account was missing. The missing account information was received several days later. At no time did the customers reach out to Claimant.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1361858 from registration records maintained by the CRD for Claimant Daniel Timothy O'Connell (CRD Number 1283449) with the understanding that, pursuant to Notice to Members 04-16, Claimant Daniel Timothy O'Connell 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The customer claimed that he suffered a loss in moving money from an IRA account to a CMA account. Upon investigation by Respondent, it was determined that the cost basis information was incorrect as a result of capital gains and dividend reinvestment. An adjustment was made to correct this information, and a new statement was issued.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1514831 from registration records maintained by the CRD for Claimant Daniel Timothy O'Connell (CRD Number 1283449) with the understanding that, pursuant to Notice to

Members 04-16, Claimant Daniel Timothy O'Connell 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

Claimant testified under oath that he advised the customer not to open an LMA account. He stated that as a CFA, he had the obligation to inform the customer that her finances did not support the possible payback consequences. Between September 2005 and May 2010, the customer's account experienced 53 margin calls. Each time, the customer chose to cover the minimum required amount. After completing a thorough investigation, Respondent denied the customer's claim and determined that the investment recommendations had been suitable for the customer and that the declines in her holdings were due to her spending with a line of credit and withdrawals from her brokerage account.

4. 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. 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 14, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: November 22, 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

William E. Nuckel

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

William E. Nuckel

William E. Nuckel
Sole Public Arbitrator

12/14/2021

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.

December 14, 2021

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