

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
David I. Bunin

Case Number: 21-01338

vs.

Respondent
Banc of America Investment Services 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

The expungement hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant David I. Bunin: Cynthia R. Moulton, Esq. and Myles Shaw, Moulton & Wilson, LLP, Bellaire, Texas.

For Respondent Banc of America Investment Services Inc.: W. Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 21, 2021.

David I. Bunin signed the Submission Agreement: May 21, 2021.

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

Banc of America Investment Services Inc. signed the Submission Agreement: June 9, 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 Number 1469202; and any and all other relief that the Arbitrator deems just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

The parties agreed that pursuant to Rule 13401(c) of the Code of Arbitration Procedure, this matter would be decided by one arbitrator.

On September 2, 2021, Claimant advised that the customer in Occurrence Number 1469202 (“customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on September 17, 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 customer did not participate in the expungement hearing. By correspondence dated September 1, 2021, the customer informed FINRA Dispute Resolution Services that he supported Claimant’s request for expungement and waived his appearance at the scheduled hearing, and requested that the arbitrator consider his letter in lieu of testimony.

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 noted that the investment complained of by the customer first began to deteriorate after Claimant had left employment with Respondent. Respondent’s settlement with the customer did not include any input from Claimant and was conducted without his knowledge. Respondent’s global settlement relating to Auction Rate Securities (“ARS”) was negotiated by Respondent and the SEC without Claimant’s knowledge or input. The Arbitrator is satisfied with Claimant’s good faith efforts to obtain the settlement documents. Based on Claimant’s BrokerCheck® Report and testimony, the Arbitrator noted that Claimant did not contribute to the settlement amount. The Arbitrator also noted that, based on Claimant’s testimony, Claimant was not a party to the settlement agreement and that the settlement amount represented a refund for the full par value of the investment.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; exhibits; Claimant's testimony, Claimant's BrokerCheck® Report, the customer's correspondence; and the settlement agreement.

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 1469202 from registration records maintained by the CRD for Claimant David I. Bunin (CRD Number 4262781) with the understanding that, pursuant to Notice to Members 04-16, Claimant David I. Bunin 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

Claimant worked for Respondent from approximately October 2004 until September, 2007. After consultation with a client, consideration of investment goals, and analysis of the individual characteristics of the client, Claimant recommended an investment in auction rate securities ("ARS"), then considered a reliable investment amounting to a cash equivalent. Some time after this investment was made, and was continuing to perform as expected, Claimant voluntarily left Respondent's employment. The particular client holding the ARS continued in his accounts with Respondent. The year following Claimant's departure there was a liquidity crisis causing a serious decline in the value of the ARS investment. There were a series of complaints about the suitability of ARS investments, including one from Claimant's former client. After some time had passed, and pursuant to the oversight of the SEC, Respondent reached a settlement agreement with holders of ARS and repurchased them at par value. Claimant's former client availed himself of this settlement. Claimant did not participate in negotiating or executing the settlement in any way, nor did he contribute to it. Claimant observes that he was not affiliated with Respondent, nor was he servicing the client, at the time that the ARS investments declined in value. This decline was a significant diminishment compared to the quality of an ARS investment at the time Claimant recommended it or at any time prior to his departure from Respondent's employment. Therefore, he maintains that it was not possible for him to be responsible either for the economic events leading to the ARS

problem, nor to the client's retention of his ARS position during those events.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Banc of America Investment Services 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: August 31, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: September 17, 2021 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

Peter E. Gillespie

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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

Peter E. Gillespie

Peter E. Gillespie
Sole Public Arbitrator

09/28/2021

Signature Date

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September 28, 2021

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