

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Ivan Ji Cen

Case Number: 21-01353

vs.

Respondent
Cetera Investment Services LLC

Hearing Site: San Francisco, 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 Ivan Ji Cen (“Claimant”): Christina Z. Vourakis, Esq., Winget Spadafora & Schwartzberg LLP, Los Angeles, California.

For Respondent Cetera Investment Services LLC (“Respondent”): Jeremy Carr, Esq., Cetera Financial Group, El Segundo, California.

CASE INFORMATION

Statement of Claim filed on or about: May 18, 2021.

Claimant signed the Submission Agreement: May 24, 2021.

Statement of Answer filed by Respondent on or about: August 3, 2021.

Respondent signed the Submission Agreement: July 26, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2071201 on the basis that the claims, allegations or

information is false, pursuant to Rule 2080(b)(1)(C); and
2. Compensatory relief from Respondent in the amount of \$1.00.

In the Statement of Answer, Respondent requested:

1. A statement from the Arbitrators on the issue of whether to order recommending that the customer complaint be expunged from Claimant's CRD records in the form required by FINRA Rule 2080;
2. Denial of Claimant's request for \$1.00 in compensatory damages; and
3. An order that all forum costs and fees are assessed against Claimant.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge having read the pleadings and other materials filed by the parties.

On September 30, 2021, Claimant advised that the customers in Occurrence Number 2071201 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrators conducted a recorded, telephonic hearing on January 19, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customers also did not participate in the expungement hearing. The Arbitrators found that the Customers had notice of the expungement request and hearing.

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

The Arbitrators also reviewed the settlement documentation related to Occurrence Number 2071201, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrators 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 Arbitrators relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report; Claimant's Statement of Claim; Respondent's Statement of Answer; Claimant's testimony; and Claimant's expungement hearing exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, the Arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrators recommend the expungement of all references to Occurrence Number 2071201 from registration records maintained by the CRD for Claimant Ivan Ji Cen (CRD Number 5474263) with the understanding that, pursuant to Notice to Members 04-16, Claimant Ivan Ji Cen 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 Arbitrators have 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 Arbitrators have made the above Rule 2080 findings based on the following reasons:

The claim, allegation, or information is factually impossible, clearly erroneous, and false. The underlying claim filed by the Customers sought unspecified compensatory damages as a result of a \$100,000.00 investment they made in April 2015.

The investment at issue was a real estate investment trust (“REIT”). The Customers’ Statement of Claim against Respondent alleges breach of fiduciary duty, negligence, breach of contract and failure to supervise. The Customers did not name Claimant as a Respondent in the Statement of Claim.

The claim is factually impossible and false for the following reasons: before investing in the aforementioned REIT in April 2015, the Customers completed Respondent’s “Illiquid Investment Acknowledgement” that tracks suitability and concentration criteria. They represented they were accredited investors who met both the REIT’s and Respondent’s required suitability standards. The Customers also executed a Subscription Agreement, acknowledging that they had received the prospectus, met the suitability standards and understood the liquidity features and other risks.

Claimant had discussions with the Customers regarding the risks of investing in a REIT, and he advised them that non-traded REITs such as these are illiquid securities without any principal protection or guaranteed distributions.

Hence, the Customers’ claims in the original Statement of Claim that Claimant’s recommendation to invest in a REIT was inappropriate for them is false. They knowingly invested having been fully advised by Claimant of the risks involved. The Customers filed a claim against Respondent on February 2, 2020. Respondent made a business decision to settle for \$27,000.00. Claimant did not participate in negotiating or approving the settlement amount and was not asked to make any monetary contributions. Respondent does not oppose Claimant’s request for expungement.

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
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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(s) that employed the associated person(s) at the time of the event(s) 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 Arbitrators have assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$1,150.00/session	=\$ 1,150.00
Pre-Hearing Conference: August 30, 2021 1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	=\$ 1,150.00
Hearing: January 19, 2022 1 session	

Total Hearing Session Fees	=\$ 2,300.00
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The Arbitrators have assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Laurel Littman Gothelf	-	Public Arbitrator, Presiding Chairperson
Brian Kimball	-	Public Arbitrator
Jeffrey Schubert	-	Non-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.

Concurring Arbitrators' Signatures

Laurel Littman Gothelf

Laurel Littman Gothelf
Public Arbitrator, Presiding Chairperson

02/03/2022

Signature Date

Brian Kimball

Brian Kimball
Public Arbitrator

02/03/2022

Signature Date

Jeffrey Schubert

Jeffrey Schubert
Non-Public Arbitrator

02/03/2022

Signature Date

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February 03, 2022

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