

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Douglas Jay Eaton

Case Number: 21-01358

vs.

Respondent
Equitable Advisors, LLC

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 Douglas Jay Eaton: Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent Equitable Advisors, LLC: Michael J. Biondi, Esq., Equitable Advisors, LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: May 25, 2021.

Douglas Jay Eaton signed the Submission Agreement: May 25, 2021.

Statement of Answer filed by Respondent on or about: July 13, 2021.

Equitable Advisors, LLC signed the Submission Agreement: July 13, 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 denied any wrongdoing or other culpability for any act or omission.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1247401; deletion of all Disclosure Reporting Pages accompanying the Underlying Claim in its entirety;

and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that it be awarded the costs of this proceeding and that all costs of this proceeding, including forum fees, be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated July 16, 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 October 26, 2021, Claimant advised that the customer in Occurrence Number 1247401 was served with the Statement of Claim and notice of the date and time of the expungement hearing. On November 5, 2021, Claimant filed an Affidavit confirming that the customer 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 December 2, 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, took no position on the request for expungement.

The customer did not participate in the expungement hearing. The Arbitrator found that the customer 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 occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1247401 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 1247401 from registration records maintained by the CRD for Claimant Douglas Jay Eaton (CRD Number 2780814) with the understanding that, pursuant to Notice to Members 04-16, Claimant Douglas Jay Eaton 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 unrefuted and credible testimony of the Claimant demonstrated that the underlying customer complaint was both erroneous and false. Illustrative literature did not show a 10.7% return rate, as alleged by the customer. Instead, it showed a range which include 0%, 6% and 12% as theoretical possibilities. Claimant offered the customer alternative investment solutions when the value of the policy in question dropped. There were numerous warnings that the illustrations were not guarantees and that they were merely illustrations. The documents clearly stated the value of the policy was based on the value of the underlying investments. The Claimant explained this in detail, the customer acknowledged it verbally and in writing. The customer was educated and did not express any confusion or misunderstanding. While the customer may have been unhappy, there was no wrongdoing on the part of Claimant.

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 event 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 14, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: December 2, 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

Patricia Kathleen Costello

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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

Patricia Kathleen Costello

Patricia Kathleen Costello
Sole Public Arbitrator

12/07/2021

Signature Date

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December 08, 2021

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