

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Nicholas Yrizarry

Case Number: 21-01403

vs.

Respondent  
Securities Service Network, Inc.

Hearing Site: Los Angeles, California

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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 Nicholas Yrizarry (“Claimant”): Denis Dice, Esq., Winget, Spadafora & Schwartzberg, LLP, Philadelphia, Pennsylvania.

Respondent Securities Service Network, Inc. (“Respondent”) did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: June 1, 2021.

Claimant signed the Submission Agreement: May 27, 2021.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

**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”).

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1092892, 1333605, 1411868, 1454068, and 1484072 from Claimant’s CRD records pursuant to FINRA Rule 2080, as:

- a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
- b. the claim, allegation, or information is false.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Respondent did not file properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Panel on all issues submitted.

Respondent did not file a Statement of Answer. The Panel determined that Respondent was served with the Claim Notification letter dated June 3, 2021 by regular mail and FedEx, as evidenced by the FedEx delivery confirmation; and the Overdue Notice (including the Statement of Claim) dated July 26, 2021 by regular mail and FedEx, as evidenced by the FedEx delivery confirmation. The Panel also determined that Respondent was served with the Notification of Arbitrator dated August 23, 2021 by regular mail and FedEx, as evidenced by the FedEx delivery confirmation. The Panel determined that Respondent is, therefore, bound by the Panel’s ruling and determination.

The Claim Notification letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent failed to register for the DR Portal.

On November 19, 2021, Claimant advised that the customers in Occurrence Number 1484072 (“Mr. and Mrs. P”), Occurrence Number 1454068 (“Mr. B”), Occurrence Number 1411868 (“Ms. R”), Occurrence Number 1333605 (“Ms. B”), and Occurrence Number 1092892 (“Ms. E”) were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. and Mrs. P, Mr. B, Ms. R, Ms. B, and Ms. E are collectively referred to as “Customers”.

The Panel conducted a recorded, telephonic hearing on December 15, 2021, 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 Panel found that the Customers had notice of the expungement request and hearing.

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

The Panel also reviewed the settlement documentation related to Occurrence Number 1484072, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant contributed to the settlement amount. The Panel also noted that expungement is still

appropriate as Claimant contributed to the settlement to minimize the costs involved in defending himself and avoid litigation costs.

The Panel noted that the disputes related to Occurrence Numbers 1092892, 1333605, 1411868, 1454068 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's BrokerCheck® Report; Claimant's hearing exhibits; and Claimant's testimony.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all references to Occurrence Numbers 1484072, 1454068, 1411868, 1333605, and 1092892 from registration records maintained by the CRD for Claimant Nicholas Yrizarry (CRD Number 2075325) with the understanding that, pursuant to Notice to Members 04-16, Claimant Nicholas Yrizarry 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 Panel has 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 Panel has made the above Rule 2080 findings based on the following reasons:

#### **Occurrence Number 1484072**

In Occurrence Number 1484072, Mr. and Mrs. P's claims that their variable annuity investment was unsuitable, and that Claimant failed to discuss tax loss harvesting in his advisory account, are clearly erroneous and false. Evidence shows that Mr. and Mrs. P signed the variable annuity prospectus and disclosure form, and product application, which indicated their investment horizon, risk tolerance, and goals and objectives. The recommended annuity provided a balanced portfolio of tax-deferred investment in diversified equity and fixed income funds and was therefore suitable. Claimant is not permitted to provide tax advice and never offered to assist in any tax loss harvesting; the investment policy statement prepared for Mr. and Mrs. P outlines the account objectives without reference to a tax harvesting strategy. Mr. and Mrs. P alleged damages of \$100,000.00 for losses in their variable annuity. Per the BrokerCheck report, the claim

was settled for a nominal figure to avoid the expense of litigation. The settlement agreement indicates this represented a partial return of the investment advisory fees charged by Claimant. Claimant contributed the settlement amount.

Occurrence Number 1454068

In Occurrence Number 1454068, Mr. B's allegation that "product details were not explained and that the products were unsuitable" regarding his investments in two variable annuities and a REIT is clearly erroneous and false. Evidence shows that Mr. B was aware that he was investing in variable annuities and a REIT by signing the prospectus and disclosure forms and execution of the product applications, thereby acknowledging his understanding of the associated investment features and receipt of the product prospectuses. Per the BrokerCheck report, Respondent denied the claim. Mr. B did not pursue arbitration or initiate a civil litigation proceeding.

Occurrence Number 1411868

In Occurrence Number 1411868, Ms. R's claim that she "had no idea she was investing in a variable annuity" is clearly erroneous and false. Evidence shows that Ms. R was aware that she was investing in a variable annuity by signing the annuity prospectus and disclosure form; execution of the annuity product application; execution of the variable annuity subaccount rebalancing form; and execution of the form transferring assets into the annuity. Per the BrokerCheck report, Respondent denied the claim. Ms. R did not pursue arbitration or initiate a civil litigation proceeding.

Occurrence Number 1333605

In Occurrence Number 1333605, Ms. B's claim of unsuitability regarding her investment in a variable annuity is clearly erroneous and false. Evidence shows that Ms. B was aware that she was investing in a variable annuity by signing two annuity prospectus and disclosure forms; execution of the annuity product application; signing an annuity contract acknowledgement and delivery statement; and correspondence with Claimant regarding her annuity investments. Per the BrokerCheck report, Respondent denied the claim. Ms. B did not pursue arbitration or initiate a civil litigation proceeding.

Occurrence Number 1092892

In Occurrence Number 1092892, Ms. E's claim that she "did not want annuities, since they make no sense at (her) current age," and that she "was surprised that all of her money was invested in annuities," is clearly erroneous and false. Evidence shows that Ms. E was aware that she was investing in variable annuities by her execution of the annuity application; execution of the annuity prospectus and disclosure form; written check marked for an annuity investment; and correspondence with Claimant regarding her annuities. Per the BrokerCheck report, the complaint was closed with no action. Ms. E elected to retain the annuity and did not pursue her complaint.

Claimant followed performed his duties as a representative in an ethical and professional manner, exercised reasonable diligence in ascertaining suitability of investments, and

acted in the best interests in furtherance of the financial objectives of the Customers in each of the referenced occurrences.

### **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 Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Panel, including a pre-hearing conference with the Panel, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,150.00/session	= \$ 1,150.00
Pre-Hearing Conference: September 20, 2021      1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$ 1,150.00
Hearing: December 15, 2021      1 session	
<b>Total Hearing Session Fees</b>	<b>= \$ 2,300.00</b>

The Panel has assessed the total hearing session fees to Claimant.

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

**ARBITRATION PANEL**

Erik R. Siering	-	Public Arbitrator, Presiding Chairperson
Lawrence Craig Williams	-	Public Arbitrator
Barton J. Brewer	-	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**

***Erik R. Siering***

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Erik R. Siering  
Public Arbitrator, Presiding Chairperson

***12/23/2021***

\_\_\_\_\_  
Signature Date

***Lawrence Craig Williams***

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Lawrence Craig Williams  
Public Arbitrator

***12/23/2021***

\_\_\_\_\_  
Signature Date

***Barton J. Brewer***

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Barton J. Brewer  
Non-Public Arbitrator

***12/23/2021***

\_\_\_\_\_  
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December 28, 2021

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