

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

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In the Matter of the Arbitration Between:

Claimant  
Benjamin A. Fuchs

Case Number: 21-01465

vs.

Respondent  
Silver Oak Securities, Incorporated

Hearing Site: Hartford, Connecticut

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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 Benjamin A. Fuchs: David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

Respondent Silver Oak Securities, Incorporated did not enter an appearance in the matter

**CASE INFORMATION**

Statement of Claim filed on or about: June 8, 2021.

Benjamin A. Fuchs signed the Submission Agreement: June 8, 2021.

Silver Oak Securities, Incorporated 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 Number 2117045.

### **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.

Respondent Silver Oak Securities, Incorporated did not file a 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 Arbitrator on all issues submitted.

On September 24, 2021, Claimant advised that the customer in Occurrence Number 2117045 was served with the Statement of Claim and notice of the date and time of the expungement hearing. On October 22, 2021, Claimant filed an Affirmation of Service 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 November 16, 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 customer also 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 also reviewed the settlement documentation related to Occurrence Number 2117045, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator 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 Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant’s credible testimony; Claimant’s BrokerCheck® Report; and the exhibits.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 2117045 from registration records maintained by the CRD for Claimant Benjamin A. Fuchs (CRD Number 6146479) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Benjamin A. Fuchs 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, and the claim, allegation, or information is false.

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

The evidence clearly showed that at all steps of the investment process, the customer was fully informed as to the benefits and risks of the five (5) alternative investments to the IRA. The customer’s income, investment profile for this account, assets, sophistication and time frame for the investment showed that it was suitable at the time of purchase. There is nothing to show that proper due diligence was not complied with. The documents signed by the customer and conversations with the Claimant repeatedly cautioned the customer and her husband as to the risks and the illiquidity of the investment. The accusation of misrepresentation is false and clearly erroneous.

The evidence clearly shows that the customer was repeatedly notified as to the illiquidity and risks of these alternative investments. Additionally, an analysis of the five (5) investments of \$97,000 each (total \$485,000) show the current value of the investments plus the distribution and sales as of the last statement issued show a net profit of \$122,686.73 on the five (5) investments. This is a combined return on investment since the March 25, 2015 purchase of 25.3%. Only one of the investments showed a loss and that was -3.1%. One of the investments at issue had a return on investment of 53.1%. This total return on investment does not reflect the money from the settlement with Respondent.

### **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 event giving rise to the dispute. Accordingly, as a party, Respondent Silver Oak Securities, Incorporated 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) hearing session on expungement request @ \$1,150.00/session	= \$ 1,150.00
Hearing: November 16, 2021 1 session	

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Total Hearing Session Fees	= \$ 1,150.00
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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**

Linda J. Baer

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Sole 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.

**Arbitrator's Signature**

***Linda J. Baer***

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Linda J. Baer  
Sole Public Arbitrator

**11/19/2021**

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Signature Date

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November 22, 2021

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