Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James Leroy Charbonneau

Case Number: 21-01500

vs.

Respondent
The Investment Center, Inc.

Hearing Site: Columbia, South Carolina

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 James Leroy Charbonneau: Erika Binnix, J.D. and Dochtor Kennedy, MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent The Investment Center, Inc.: Douglas A. Wright, CRCP, CCO, The Investment Center, Inc., Bedminster, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: June 11, 2021.
James Leroy Charbonneau signed the Submission Agreement: June 11, 2021.

Statement of Answer filed by Respondent on or about: August 2, 2021.
The Investment Center, Inc. signed the Submission Agreement: July 7, 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 supported Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1239042, 1247385 and 1381639; and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator affirm Claimant's request for relief as described in Claimant's Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about November 16, 2021, Claimant advised that the customers in Occurrence Numbers 1239042, 1247385 and 1381639 ("Customer A, Customer B and Customer C") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about November 22, 2021, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with proof of service via FedEx and via USPS upon Customer A, Customer B and Customer C, advising that Customer A, Customer B and Customer C were 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 January 11, 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 Arbitrator found that the Customers 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1239042, 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 contributed to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 1247385 was not settled and, therefore, there was no settlement document to review.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1381639, 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: Claimant's Statement of Claim; Respondent's Answer; Claimant's Affidavit of Service upon Customer A, Customer B and Customer C; Claimant's Submission of Expungement Hearing Exhibits; Claimant's BrokerCheck® Report; and Claimant's testimony.

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 Numbers 1239042, 1247385 and 1381639 from registration records maintained by the CRD for Claimant James Leroy Charbonneau (CRD Number 2148576) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Leroy Charbonneau 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 claim, allegation, or information is false.

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

   This matter concerns the expungement of three Occurrence Numbers 1239042, 1247385 and 1381639 for Claimant.

   On the pleadings, oral testimony and documentary evidence presented, the Arbitrator found that Claimant has met Claimant's burden pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C). The Arbitrator found the allegations in all three occurrences are clearly erroneous and false.

   Occurrence Number 1239042

   On or about 1999 to 2000, Customer A was referred to Claimant by an attorney friend who happened to be Customer A's neighbor and then the attorney friend filed a complaint for Customer A. That in and of itself was the basis for Claimant settling the matter and not for any reason associated with the merits of Customer A's complaint. Essentially, Claimant desired to preserve the relationship with Claimant's friend and settled for a small amount in relation to the claim to avoid extensive legal fees and costs.

   Customer A sought to invest in individual stocks. Customer A previously complained that he had not received the attention he should have received from his prior broker. Customer A was satisfied with an exuberant market from years 1995 to 2000. Customer A's investment objective was growth in good companies with a long-term horizon. Customer A invested in what were quality stocks at the time such as Home Depot, Oracle

and Microsoft. Customer A did have some Enron stock (2/3 of three managed accounts), but its collapse was not due to the advice or lack of advice of Claimant.

Claimant was frequently and actively involved in meetings with Customer A, who constantly analyzed Customer A's account. Claimant testified that if anything, Claimant was over-attentive to Customer A's account. To be able to give the best information to Customer A, Claimant (with appropriate Compliance Department approval) produced an ongoing, monthly spreadsheet for Customer A so Customer A could essentially micromanage the investments in Customer A's portfolio. Claimant had many meetings with Customer A. Claimant also arranged with another broker in the office to assist Customer A if Claimant was not in the office. Customer A was in the office at least once a month. Any claim as to lack of attention to Customer A's account is absolutely false and clearly erroneous.

Customer A's claim that Customer A lost money on six stocks purchased from September 29, 2000 to January 23, 2001, and one stock purchase on November 23, 2001, is without merit. The securities may have lost money but that does not define wrongdoing. Customer A and Claimant had many conversations, and the account as structured was diversified. Markets rise and fall over a long-term investment horizon. Other than the "losing money" there is no allegation as to what Claimant did to cause that. In fact, the market declined unexpectedly on September 11, 2001, and did not start to recover again until October of 2002. The dotcom bubble burst also affected the stock values. That was the causation for the loss, not anything done or not done by Claimant in this instance. Claimant recommended that Customer A hold and there should be a comeback in value. Customer A chose not to do that.

Occurrence Number 1247385

Customer B was an aggressive investor who wanted to invest in individual equities. Nonetheless, Customer B was cautioned by Claimant as to the risk benefits of diversification of investments in light of the investment objective of growth and with a long-term investment horizon. Claimant spent considerable time with Customer B during their association and tried to sway Customer B away from aggressive to very aggressive investments to protect Customer B.

Near the end of 2004, the market was somewhat erratic and volatile. Customer B wanted to sell off everything. Claimant was not in the office when Customer B called. Claimant returned the call within fifteen minutes. When Claimant returned to Claimant's office, Claimant again called Customer B and had a discussion for ten minutes as to Customer B's intent. Customer B and Claimant discussed each security and the reason for the investment. Customer B chose not to sell. Claimant suggested that selling was not consistent with a long-term investment horizon, and one should not make a total liquidation of an account based on a current move of stocks. Customer B and Claimant had several further discussions, and in hindsight the market did improve in 2005.

The crux of Customer B's allegations really concerns the unexpected decline in the value of Elan Corporation Stock (the "ELN Stock"). During the relevant time, a local company (Elan Corporation) was developing and publicizing its new drug for treating Multiple Sclerosis ("MS") which had Food and Drug Administration ("FDA") approval in late 2004.

Customer B desired to acquire the stock. The loss of value was clearly not due to the actions of Claimant, but rather to an announcement in February 2005 that the FDA withdrew its approval of the drug due to the death of two patients who had adverse reactions incident to a rare brain disease. That was clearly not something Claimant reasonably could have anticipated.

Customer B's allegations that Claimant failed to follow Customer B's instructions to sell Customer B's securities in November or December of 2004, are false or at best clearly erroneous in that they both had many, regular conversations concerning the account after that date. Further, Customer B received at least two monthly statements thereafter which showed the securities had not been sold. Also, Claimant reviewed with Customer B the account holdings on a computer screen. At no time did Customer B question why Customer B still had the securities in Customer B's account or reaffirm Customer B's alleged instructions to sell. More likely, as the overall account value was increasing through February of 2005, Customer B chose not to sell and waited until March 31, 2005, to send a complaint letter purporting to demand a sale of Customer B's stock in December of 2004. Simply stated, the Arbitrator found there never was an order to sell and, therefore, none was entered by Claimant.

The case was not settled.

Occurrence Number 1381639

The primary customer in Customer C's account was a mother who was retired, had a small 401(k) and wanted to invest her savings. Customer C, the mother, had invested in mutual funds and understood Customer C's investments. Another customer in Customer C's account was the mother's son, who had power of attorney and became the trustee over the mother's accounts, lived with the mother and to the best information of Claimant did not work. Customer C, the mother, met with Claimant and discussed three primary matters: rate of return, risk and how the broker was paid. Customer C, the mother, was content with Claimant's explanation.

For the years 1995 to September 11, 2001, Customer C was making money in the investments but not taking the funds. This generated Internal Revenue Service ("IRS") 1099 earnings and the need to pay taxes. Claimant explained how the capital gains worked for annuities. Following the September 11, 2001 market drop, Customer C, the mother, continued to pay taxes without taking earnings. Customer C, the mother, was noncommittal but Customer C, the son, was pushing to avoid the tax issue.

Customer C met with Customer C's estate planning attorney to create a trust and move the investment to a variable annuity. Consequently, the decision was made after full disclosure as to annuity investments, surrender charges and their features, that Customer C, the mother, should move from the taxable mutual funds to annuities to defer taxes. At the time, annuity companies were paying bonuses to customers to get customers' business or provided a living benefit as well as a death benefit. The risk of loss was low. The new surrender charges were discussed and understood. With the concurrence of Customer C, the American Funds mutual funds were moved to an American Skandia ("American Skandia") annuity. It eliminated the current taxation of capital gains and offered protection of the investment. The first move was before

September 11, 2001. After September 11, 2001, Claimant suggested that Customer C switch to another company (ING) which had a bonus to offset surrender charge for the transfer, and which transfer was done properly as a 1035 exchange. Claimant and Customer C, the son, spoke many times (almost weekly) and had many office meetings following the market decline from early 2000 until October of 2002.

Thereafter, Customer C, the son, came into the office without Customer C, the mother, and wanted to take out more money which would generate a surrender charge. Claimant was concerned as to Customer C, the son's intent. The relationship with Customer C, the son, then became somewhat adversarial. Claimant had a sense of concern as to what Customer C, the son, was desiring. Thereafter, Customer C, the son, filed a complaint, and Customer C, the mother, never complained.

The damages alleged were believed by Claimant to be the surrender penalty for which Claimant had advised Customer C to avoid and the remainder was due to market loss. The case was settled by the firm to avoid the costs of arbitration. Claimant did not contribute to the settlement.

Conclusion

The Arbitrator found that the three Occurrence Numbers 1239042, 1247385 and 1381639 should be expunged pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C). The Arbitrator found the allegations in all three Occurrence Numbers are clearly erroneous and false. The continued reporting of them on Claimant's BrokerCheck® Report and CRD registration records serves no meaningful investor protection or regulatory value, and the continued reporting of the information is harmful to 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(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 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: October 27, 2021	1 session		
One (1) hearing session on expungement request @ $1,150.00/session		=$	1,150.00
Hearing: January 11, 2022	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

John P. Cullem - 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

John P. Cullem **01/28/2022**

John P. Cullem
Sole Public Arbitrator

Signature Date

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.

January 28, 2022
Date of Service (For FINRA Dispute Resolution Services use only)