

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Dwayne Mark Tidwell

Case Number: 21-01551

vs.

Respondents
Merrill Lynch, Pierce, Fenner & Smith Incorporated
and Stanford Group Company

Hearing Site: Houston, Texas

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. Members

REPRESENTATION OF PARTIES

For Claimant Dwayne Mark Tidwell (“Claimant”): Tosh D. Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”): W. Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

Respondent Stanford Group Company (“Stanford”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: June 18, 2021.
Claimant signed the Submission Agreement: June 17, 2021.

Statement of Answer filed by Merrill Lynch on or about: July 22, 2021.
Merrill Lynch signed the Submission Agreement: July 22, 2021.

Stanford 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”).

In the Statement of Answer, Merrill Lynch took no position as to the expungement request and also asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1220026 and 1403630.

In the Statement of Answer, Merrill Lynch opposed any request for compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

Stanford did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”).

On July 15, 2021, Stanford submitted a Second Amended Order Appointing Receiver (“Order”) from the United States District Court. In accordance with the Order, all claims against Stanford are indefinitely stayed. Therefore, the Panel made no determination with respect to the claims against Stanford.

On December 22, 2021, Claimant advised that the customers in Occurrence Numbers 1220026 and 1403630 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notices”).

The Arbitrators conducted a recorded, telephonic hearing on January 10, 2022, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Neither Merrill Lynch nor Stanford participated 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 occurrences in the CRD.

The Arbitrators were unable to review the settlement documentation in Occurrence Numbers 1220026 and 1403630. On January 3, 2022, Merrill Lynch filed correspondence that it was unable to locate any documentation relating to the customer complaint that occurred while Claimant was registered at Merrill Lynch. Claimant submitted an affidavit that he could not locate the settlement documentation, despite diligent efforts. Based on Claimant’s affidavit and the evidence, the Arbitrators noted that Claimant did not contribute to the settlement amounts and considered the amount of payment made to any party to the settlements.

In recommending expungement, the Arbitrators relied upon the following documentary or other evidence: the pleadings, Claimant’s testimony, Claimant’s BrokerCheck® Report, Notices, FINRA Regulatory Notice 09-12, and Claimant’s Exhibits 5-10.

AWARD

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

The Arbitrators recommend the expungement of all references to Occurrence Numbers 1220026 and 1403630 from registration records maintained by the CRD for Claimant Dwayne Mark Tidwell (CRD Number 2612587) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dwayne Mark Tidwell 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 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 Arbitrators have made the above Rule 2080 findings based on the following reasons:

Occurrence Number 1220026

The evidence demonstrated that the customer had a non-discretionary account and he had to expressly authorize every transaction. He was a sophisticated investor who directed all actions taken in his account. The customer chose to invest in energy and technology-related stocks and various mutual funds. He received confirmation notices for each transaction as well as monthly statements detailing all activity but never expressed any dissatisfaction with Claimant's services. The customer's account suffered losses and he filed an arbitration claim with NASD alleging Claimant made unsuitable investments by over-concentrating and had churned his account. The evidence demonstrated that the customer expressly authorized every transaction, choosing the investments and the timing of all transactions and, thus, Claimant did not engage in the alleged misconduct. Moreover, the small amount of commissions Claimant earned from the customer's account suggests that no "churning" was taking place. The evidence established that Customer Frock's claim, allegation or information is factually impossible or clearly erroneous per FINRA Rule 2080(b)(1)(A), and false per FINRA Rule 2080(b)(1)(C).

Occurrence Number 1403630

The evidence demonstrated that this occurrence was noted on Claimant's BrokerCheck® Report per FINRA 09-12 February 2009 Regulatory Notice directing that "settlements" enforced as a result of the ARS market collapse be listed as "Customer Complaints" despite the fact that the Auction Rate Security ("ARS") investments recommended by financial advisors like Claimant were made in reliance on the research and recommendation of the brokerage firms by which they were employed. Claimant had no reason to foresee that the ARS market would collapse and did not misrepresent the

investment at the time the customer purchased it. Pursuant to the intervention of FINRA and the SEC, as well as multiple states' regulators, the brokerage firms bought back the ARSs they had sold to customers, so the customer's entire investment was returned and he suffered no loss. The evidence established that the customer's claim, allegation or information is factually impossible or clearly erroneous per FINRA Rule 2080(b)(1)(A), and false per FINRA Rule 2080(b)(1)(C).

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, Merrill Lynch 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), 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: October 13, 2021	1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: January 10, 2022	1 session	

Total Hearing Session Fees	= \$	2,300.00
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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.

ARBITRATION PANEL

Lynne M. Gomez	-	Public Arbitrator, Presiding Chairperson
William James Smith	-	Public Arbitrator
Maurice J. Fallas	-	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

Lynne M. Gomez

Lynne M. Gomez
Public Arbitrator, Presiding Chairperson

01/18/2022

Signature Date

William James Smith

William James Smith
Public Arbitrator

01/18/2022

Signature Date

Maurice J. Fallas

Maurice J. Fallas
Non-Public Arbitrator

01/18/2022

Signature Date

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January 18, 2022

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