

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard Paul Miller

Case Number: 21-01552

vs.

Respondent
Questar Capital Corporation

Hearing Site: Tampa, Florida

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 Richard Paul Miller: Zachary Morse, Esq., Of Counsel, HLBS Law, Westminster, Colorado.

For Respondent Questar Capital Corporation: Katherine C. Donlon, Esq., Johnson, Cassidy, Newlon & DeCort, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: June 17, 2021.

Richard Paul Miller signed the Submission Agreement: June 17, 2021.

Statement of Answer filed by Respondent on or about: August 9, 2021.

Questar Capital Corporation signed the Submission Agreement: August 3, 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 had no objection to Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1614849 and 1883861 from his CRD record, pursuant to FINRA Rules 2080(b)(1)(A) and (C); deletion of all Disclosure Reporting Pages accompanying the Occurrences; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not delineate a relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 20, 2021, Claimant advised that the customer in Occurrence Number 1614849 (“Customer A”) is deceased and submitted the LexisNexis Death Record and an obituary as proof thereof. On December 23, 2021, Claimant filed an Affidavit affirming that Customer A could not be served because he is deceased.

On December 20, 2021, Claimant advised that the customer in Occurrence Number 1883861 (“Customer B”), through her trustees, was served with the Statement of Claim and notice of the date and time of the expungement hearing. On December 23, 2021, Claimant filed an Affidavit, as well as FedEx tracking information, confirming that Customer B, through her trustees, 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 February 22, 2022, 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, had no objection to the request for expungement.

The Customers 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 Numbers 1614849 and 1883861, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: settlement agreements for the Customers; Claimant’s BrokerCheck® Report; Claimant’s exhibits 1-43; Affidavit of Service; FedEx shipping receipt; December 20, 2021 memorandum from Claimant’s counsel to the trustees of Customer B; LexisNexis Death Record for Customer A; 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 1614849 and 1883861 from registration records maintained by the CRD for Claimant Richard Paul Miller (CRD Number 2487987) with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Paul Miller 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:

In Occurrence Number 1614849 (Case Number 12-01826), Customer A was an experienced investor, one who had previously invested in a non-traded real estate investment trust (REIT). Customer A's investment objectives were growth and income with moderate risk tolerance. Customer A had low liquidity needs, and his investment horizon was long term. In Occurrence Number 1883861 (Case Number 16-01302), Customer B had limited investment experience, low income, and high need for liquidity. Her objectives were growth and income with moderate risk tolerance, and her investment horizon was long term.

Regarding each Occurrence, Claimant testified that he met numerous times with each of the Customers. Claimant testified that he recommended a balanced, diversified portfolio that comported with the Customers' respective needs and objectives. The actual investment made in the REIT was a sound component of the Customers' investment portfolios. Claimant testified, and documentary evidence showed, that each of the Customers signed disclosure documents and all other required documentation, affirming their understanding of risks inherent in a REIT. Claimant's recommendations of the investments in a REIT comported with Respondent's guidelines and was approved by Respondent.

The Customers alleged fraud, misrepresentation, breach of fiduciary duty, and negligence. However, the record shows no credible evidence to sustain any cause of action against Claimant in either case. Claimant testified credibly.

Claimant was not named in either complaint and had no role in deciding whether to litigate or settle the disputes. Those decisions remained with Respondent. Each settlement appeared to be a nominal amount, compared to the amount demanded in each of the Customers' respective Statements of Claim and when compared to the potential costs of arbitrating.

Claimant did not contribute to the settlement amounts, and the settlements were not conditioned on an agreement not to contest the expungement request.

Claimant's BrokerCheck® Report shows no other customer complaints.

Based on the foregoing, the Arbitrator finds that Claimant is entitled to expungement of both Occurrence Numbers 1614849 and 1883861.

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:

Expungement 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 events giving rise to the dispute. Accordingly, as a party Respondent is assessed the following:

Member Surcharge	= \$	2,000.00
Member Process	= \$	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: February 22, 2022 1 session		

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

Maurice M. Feller

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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

Maurice M. Feller

Maurice M. Feller
Sole Public Arbitrator

02/25/2022

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.

February 25, 2022

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