

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

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In the Matter of the Arbitration Between:

Claimant  
Yulia Kalk

Case Number: 21-01554

vs.

Respondent  
1st Discount Brokerage, Inc.

Hearing Site: Boca Raton, Florida

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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 Yulia Kalk: Benjamin Winograd, Esq., HLBS Law, Westminster, Colorado.

For Respondent 1st Discount Brokerage, Inc.: Nicky Cheng, Chief Compliance Officer, 1st Discount Brokerage, Inc., Lake Worth, Florida.

**CASE INFORMATION**

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

Yulia Kalk signed the Submission Agreement: June 17, 2021.

Statement of Answer filed by Respondent on or about: August 8, 2021.

1st Discount Brokerage, Inc. signed the Submission Agreement: July 16, 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 requests.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1431257, 1461011, 1431258; deletion of all disclosure reporting pages accompanying Occurrence Numbers 1431257, 1461011 and 1431258; 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 November 15, 2021, Claimant filed proof that the customers in Occurrence Numbers 1431257, 1461011, 1431258 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On November 22, 2021, Claimant filed an Affidavit, along with proof of service, confirming that the Customers were served via Federal Express 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 4, 2022, so the parties could present oral argument and evidence on Claimant's requests for expungement.

Respondent did not participate in the expungement hearing and as stated in the Statement of Answer, did not oppose the requests for expungement.

The Customers in Occurrence Numbers 1431257 and 1461011 did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

A Customer associated with Occurrence Number 1431258 (the "Customer in 1431258") participated in the expungement 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(s) in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1431257, 1461011, 1431258, 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 related to Occurrence Numbers 1431257 and 1431258 were not conditioned on any party to the settlements not opposing the expungement request. The Arbitrator noted that the settlement agreement in Occurrence Number 1461011, dated February 19, 2010, provided that the customer "agreed not to oppose expungement and agreed to consent to an order of expungement," but the settlement agreement was entered into prior to FINRA Rule 2081, adopted as of July 30, 2014, which prohibits settlement agreements that provide that the customer will not oppose expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the Customer in 1431258 (Arbitration Case Number 08-03438) joined the telephonic expungement hearing and was given the opportunity to cross examine Claimant. He was also permitted to testify. He maintained that he had never been compensated for his losses by Respondent. After review of the settlement documents, it was ascertained by the Arbitrator that the Customer in 1431258 had indeed signed the settlement agreement in this arbitration and was paid an agreed upon settlement amount, representing a fraction of the

amount requested. The Customer in 1431258 then agreed that he had received this sum but stated that it had been paid by his attorneys through their bank. It was explained to him that this sum was paid by Respondent to his attorneys' escrow account pursuant to the settlement agreement.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimant's exhibits; Claimant's testimony; and the testimony of the Customer in 1431258.

### **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 1431257, 1461011, 1431258 from registration records maintained by the CRD for Claimant NAME (CRD Number 2612028) with the understanding that, pursuant to Notice to Members 04-16, Claimant NAME 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

Occurrence Numbers 1431257, 1461011, and 1431258 (the "Occurrences") all arise out of the same set of facts wherein Claimant, Respondent 1st Discount Brokerage, Inc. ("1st Discount") and 1st Discount's Chief Executive Officer were named as Respondents in three (3) separate arbitration cases. The arbitration cases were filed by the customers of a registered investment advisor and independent contractor for 1st Discount. The investment advisor defrauded his customers in a Ponzi scheme allegedly unknown to all Respondents in the arbitrations. The investment advisor set up a sham company, Park Capital Management Group ("PCMG") as a registered investment advisor company when, in fact, it was not registered. The investment advisor led 1st Discount's customers to place their assets with PCMG and fabricated false statements reflecting trades that had not been placed, as well as high returns which were not achieved. 1st Discount discovered the scheme on June 20, 2008. On June 30, 2008 the investment advisor

informed these customers in writing that their accounts “had no current liquid value” and admitted he was unable to return the value of their investments. The scheme was investigated by the FBI, SEC, FINRA and other regulatory agencies. The investment advisor eventually was found guilty of operating a Ponzi scheme and was sentenced to 96 months in prison. The arbitrations filed by most of the customers defrauded by the investment advisor were settled in 2009.

The testimony and exhibits presented at the expungement hearing indicated that Claimant’s role as Chief Compliance Officer (“CCO”) for 1st Discount did not include any supervisory responsibility for the investment advisor or his activities. None of the customers of the investment advisor who lodged claims in the underlying Occurrences were clients of Claimant. Claimant’s role as CCO was limited to the design and maintenance of compliance structures, processes and procedures for 1st Discount. An Executive Vice-President for 1st Discount served as Chair of the company’s compliance committee and had supervisory authority over all registered investment advisors of 1st Discount. Moreover, this Executive Vice-President had the sole authority to implement the compliance procedures and processes, including annual inspections of the registered advisors’ offices, and review of all emails, correspondence, trades and statements associated with such offices. After the FBI, SEC and FINRA investigation of the Ponzi scheme and practices of 1st Discount, Claimant was exonerated. After investigation by the SEC, the previously mentioned Executive Vice-President was fined and censured. While named as a Respondent in the underlying Occurrences, Claimant did not participate in the settlement discussions or contribute any of the settlement amounts. The settlements that were paid in the underlying Occurrences were a small fraction of the amounts sought by the defrauded customers and a nominal amount compared with the cost of continued litigation and arbitration.

The allegations of negligence and failure to supervise contained in the underlying Occurrences complaints are not supported by the facts. Accordingly, Claimant is entitled to expungement pursuant to FINRA Rule 2080 (b) (1) A, B, and C. The public disclosure of the false allegations in the Occurrences does not offer any public protection and has no regulatory value.

### **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 11, 2021	1 session

One (1) hearing session on expungement request @ \$1,150.00/session	= \$ 1,150.00
Hearing: January 4, 2022	1 session

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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.

**ARBITRATOR**

Edward R. Niederriter

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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**

***Edward R. Niederriter***

Edward R. Niederriter  
Sole Public Arbitrator

**01/13/2022**

Signature Date

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January 18, 2022

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