

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Binnie Gia Phung

Case Number: 21-01586

vs.

Respondent
Berthel Fisher & Company Financial Services, Inc.

Hearing Site: Los Angeles, California

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 Binnie Gia Phung: Zachary S. Morse, Esq., HLBS Law, Westminster, Colorado.

For Respondent Berthel Fisher & Company Financial Services, Inc.: Shelley R. Davenport, Esq., Berthel Fisher & Company Financial Services, Inc., Cedar Rapids, Iowa.

CASE INFORMATION

Statement of Claim filed on or about: June 22, 2021.

Claimant signed the Submission Agreement: June 22, 2021.

Statement of Answer filed by Respondent on or about: August 13, 2021.

Respondent signed the Submission Agreement: August 13, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim alleging that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository (“CRD”), is defamatory in nature.

In the Statement of Answer, Respondent took no position on Claimant’s request for expungement made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Form U5 amendments corresponding with Occurrence Number 2094368, and those relevant portions of the Form U4, from Claimant's CRD records on the basis that the statement is defamatory in nature and tends to mislead, to include:
 - a. amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary;"
 - b. expungement of the explanation for the Termination from Claimant's CRD;
 - c. amendment of the answer to question 7F(1) on Claimant's Form U5, from a "yes" response to "No;" and
 - d. deletion of the Termination Disclosure Reporting Pages accompanying Occurrence Number 2094368;
2. Damages in the amount of \$1.00 from Respondent; and
3. Any other relief as the Arbitrator deems just and equitable

In the Statement of Answer, Respondent requested:

1. The Arbitrator deny Claimant's request for \$1.00 in damages;
2. No other relief against Respondent be awarded; and
3. All FINRA filing fees, hearing fees, etc. to be assessed to Claimant.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not appear at the evidentiary hearing. Upon review of the file, the Arbitrator determined that Respondent received due notice of the hearing and that arbitration of the matter would proceed without Respondent present, in accordance with the Code of Arbitration Procedure ("Code").

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 the Reason for Termination and Termination Explanation in Section 3 of Binnie Gia Phung's (CRD Number 3226857) Form U5 filed by Berthel, Fisher & Company Financial Services, Inc. on November 5, 2020 and maintained by the Central Registration Depository ("CRD"). The Reason for Termination shall be changed to "Voluntary" and the Termination Explanation shall be deleted in its entirety and should appear blank. This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Arbitrator further recommends the expungement of all references to Occurrence Number 2094368 maintained by the CRD for Binnie Gia Phung. Any "Yes" answers should be changed to "No," as applicable.

The Arbitrator recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. Binnie Gia Phung must forward a copy of this Award to FINRA's Credentialing, Registration, Education and Disclosure Department for review.

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 = \$ 50.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 150.00

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 @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: October 15, 2021 1 session

One (1) hearing session @ \$50.00/session = \$ 50.00
Hearing: March 15, 2022 1 session

Total Hearing Session Fees = \$ 100.00

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

Robert E. Jenks

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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

Robert E. Jenks

Robert E. Jenks
Sole Public Arbitrator

03/18/2022

Signature Date

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March 18, 2022

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