

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Scott Alan Turcott

Case Number: 21-01708

vs.

Respondent
Merrill Lynch Pierce Fenner & Smith Inc.

Hearing Site: Phoenix, Arizona

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 Scott Alan Turcott (“Claimant”): Brandon M. Taaffe, Esq., Shumaker, Loop & Kendrick, LLP, Sarasota, Florida.

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Mark P. Harbison, Esq., Rubin, Fortunato & Harbison P.C., Paoli, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: July 2, 2021.

Amended Statement of Claim filed on or about: September 10, 2021.

Claimant signed the Submission Agreement: July 2, 2021.

Statement of Answer filed by Respondent on or about: October 1, 2021.

Respondent signed the Submission Agreement: July 23, 2021.

CASE SUMMARY

In the Statement of Claim and Amended 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of Occurrence Numbers 1872033 and 1886114.

In the Statement of Answer, Respondent did not set forth a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 20, 2021, Claimant advised that the customer in Occurrence Number 1872033 (“Mr. S”) and the customer in Occurrence Number 1886114 (“Mr. W”) were served with the Amended Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. S and Mr. W are collectively referred to as “Customers”.

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.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

The Customers 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 also reviewed the settlement documentation related to Occurrence Numbers 1872033 and 1886114, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrators 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 Arbitrators relied upon the following documentary or other evidence: Claimant’s BrokerCheck® Report; the Salesforce notes; Respondent’s customer complaint form; Respondent’s response to allegations; settlement agreements; and Claimant’s testimony.

AWARD

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

1. The Arbitrators recommend the expungement of all references to Occurrence Numbers 1872033 and 1886114 from registration records maintained by the CRD for Claimant Scott Alan Turcott (CRD Number 3123428) with the understanding that, pursuant to Notice to Members 04-16, Claimant Scott Alan Turcott 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 Arbitrators have made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Arbitrators have made the above Rule 2080 finding based on the following reasons:

Occurrence Number 1872033 in which Mr. S was the Customer

Claimant was a member of the “Turcott Team”. Although he had met Mr. S, other members of the team serviced the account and provided all of the investment advice. Claimant did not participate in the settlement negotiations, was not a party to the settlement agreement and did not contribute to the settlement amount.

Occurrence Number 1886114 in which Mr. W was the Customer

Claimant was a member of the “Turcott Team”. Although he had met Mr. W, other members of the team serviced the account and provided all of the investment advice. The sole documented interface with Mr. W was administrative. Claimant did not participate in the settlement negotiations, was not a party to the settlement agreement and did not contribute to the settlement amount.

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
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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, Respondent is assessed the following:

Member Surcharge	= \$	2,000.00
Member Process Fee	= \$	3,850.00

Hearing Session Fees and Assessments

The Arbitrators have assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$1,150.00/session	= \$	1,150.00
Pre-Hearing Conference: November 15, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: January 10, 2022	1 session	
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Total Hearing Session Fees	= \$	2,300.00

The Arbitrators have assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Benjamin F. Breslauer	-	Public Arbitrator, Presiding Chairperson
Howard Gerber	-	Public Arbitrator
John B. Kinsellagh	-	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

Benjamin F. Breslauer

Benjamin F. Breslauer
Public Arbitrator, Presiding Chairperson

02/03/2022

Signature Date

Howard Gerber

Howard Gerber
Public Arbitrator

02/03/2022

Signature Date

John B. Kinsellagh

John B. Kinsellagh
Non-Public Arbitrator

02/03/2022

Signature Date

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February 03, 2022

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