

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Benjamin C. Lau

Case Number: 21-01729

vs.

Respondent
Fidelity Brokerage Services LLC

Hearing Site: San Diego, 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 Benjamin C. Lau (“Claimant”): Frances Menzer, Esq., HLBS Law, Westminster, Colorado.

For Respondent Fidelity Brokerage Services LLC (“Respondent”): Travis L. Salmon, Esq., FMR LLC Legal Department, Durham, North Carolina.

CASE INFORMATION

Statement of Claim filed on or about: July 7, 2021.
Claimant signed the Submission Agreement: June 7, 2021.

Statement of Answer filed on or about: October 7, 2021.
Respondent signed the Submission Agreement: October 7, 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 took no position on Claimant’s expungement request and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1043957 from Claimant's CRD records, pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Number 1043957 from Claimant's CRD records, pursuant to FINRA Rule 2080(b)(1)(B) as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of Occurrence Number 1043957 from Claimant's CRD records, pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation, or information is false;
4. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1043957; and
5. Any and all other relief the Arbitrator deems just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 21, 2021, the parties agreed to proceed with a single arbitrator for this matter.

On October 25, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On November 24, 2021, Claimant filed a response opposing the Motion to Dismiss. On December 16, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. The Arbitrator hereby grants the Motion to Dismiss on the grounds that more than nineteen years have elapsed between the November 28, 2001 reporting of the underlying claim on Claimant's CRD records and Claimant's July 7, 2021 filing of the Statement of Claim.

Respondent's Motion to Dismiss pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

AWARD

After considering the pleadings, the testimony and evidence presented at the December 16, 2021 recorded pre-hearing conference, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed, pursuant to Rule 13206(a) of the Code.
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
**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 = \$ 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$1,150.00/session = \$ 2,300.00
Pre-Hearing Conferences: November 2, 2021 1 session
December 16, 2021 1 session

Total Hearing Session Fees = \$ 2,300.00

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

Kevin K. Forrester

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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

Kevin K. Forrester

Kevin K. Forrester
Sole Public Arbitrator

12/17/2021

Signature Date

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December 17, 2021

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