

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Benjamin C. Lau

Case Number: 21-01733

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”): Ariel Okonsky, Esq., HLBS Law, Westminster, Colorado.

For Respondent Fidelity Brokerage Services LLC (“Respondent”): Stacey N. Schmidt, Esq. and Leslie Blickenstaff, Esq., FMR LLC Legal Department, Boston, Massachusetts and Thomas M. McHugh, Esq., Bressler, Amery & Ross, P.C., New York, New York.

CASE INFORMATION

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

Statement of Answer filed by Respondent on or about: August 31, 2021.
Respondent signed the Submission Agreement: September 29, 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 denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. An award granting expungement of the Form U5 corresponding with Occurrence Number 1082293, 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 Reason for Termination explanation on Claimant's CRD records;
 - c. amendment of the answer to question 14J(1) on the Form U4 to read "No"; and
 - d. deletion of the Termination Disclosure Reporting Pages accompanying occurrence number 1082293;
2. An award of 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. Dismissal of the Statement of Claim in its entirety;
2. All forum fees and costs be assessed to Claimant;
3. An order, requiring Claimant to pay Respondent's costs and fees associated with filing this Statement of Answer to a nineteen-year-old Statement of Claim; and
4. Such other, further and different relief as the Arbitrator may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 31, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On September 10, 2021, Claimant filed a response opposing the Motion to Dismiss. On September 15, 2021, Respondent filed a reply in support of its Motion to Dismiss. On January 31, 2022, Respondent filed a supplement to its Motion to Dismiss. On March 1, 2022, Respondent renewed its Motion to Dismiss. On March 8, 2022, the Arbitrator heard oral arguments on the Motion to Dismiss. The Arbitrator hereby grants the Motion to Dismiss for the reasons stated in the Findings section below.

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.

FINDINGS

Claimant was employed by Respondent as of 2002. In 2002, Respondent terminated Claimant's employment. In June 2002, Respondent filed on Claimant's Form U5 with FINRA that Respondent had terminated Claimant for violating company policy by signing a transfer-of-assets form on behalf of Claimant's customer. On July 7, 2021, Claimant filed his Statement of Claim for expungement. Claimant was aware of the Form U5 filing by Respondent in 2002. Respondent did not prevent Claimant from filing an expungement claim within FINRA's six-year statute of limitations. Claimant did not offer an explanation for his delay in filing his expungement claim.

Respondent's Motion to Dismiss is granted because of the plain language of FINRA Rule 13206(a): "No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim." The event or occurrence giving rise to the present claim is Respondent's Form U5 filing. Claimant argues that Respondent's alleged defamation was ongoing and therefore the six-year statute of limitations does not apply. If one accepts Claimant's position regarding the ongoing nature of the defamation, then FINRA's statute of limitations would be rendered meaningless.

AWARD

After considering the pleadings, the testimony and evidence presented at the March 8, 2022 recorded pre-hearing conference, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed without prejudice, pursuant to Rule 13206 of the Code.

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(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 = \$ 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 100.00
Pre-Hearing Conferences: October 26, 2021 1 session
March 8, 2022 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$75.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$25.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Thomas L. Marshall

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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

Thomas L. Marshall

Thomas L. Marshall
Sole Public Arbitrator

03/09/2022

Signature Date

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March 09, 2022

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