

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Donald Michael Albach

Case Number: 21-01781

vs.

Respondent
MSI Financial Services, Inc.

Hearing Site: Jersey City, New Jersey

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 Donald Michael Albach: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent MSI Financial Services, Inc.: Martin Harris, Esq., Harris & Affiliates, Ltd, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed on or about: July 13, 2021.

Donald Michael Albach signed the Submission Agreement: July 13, 2021.

Statement of Answer filed by Respondent on or about: August 31, 2021.

MSI Financial Services, Inc. signed the Submission Agreement: August 30, 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.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1160560, 1295594, and 1174770.

In the Statement of Answer, Respondent requested that all forum fees and session fees be charged to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

The parties agreed to proceed with one Arbitrator pursuant to FINRA Rule 13401(c).

On January 7, 2022, Claimant advised that the customers in Occurrence Numbers 1160560, 1295594, and 1174770 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on February 3, 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, did not oppose the request for expungement.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1174770, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

The Arbitrator noted that the disputes related to Occurrence Numbers 1160560 and 1295594 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, exhibits, Claimant's testimony, and Claimant's BrokerCheck® Report.

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 1160560 and 1295594 from registration records maintained by the CRD for Claimant Donald Michael Albach (CRD Number 1812200) with the understanding that, pursuant to Notice to Members 04-16, Claimant Donald Michael Albach 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; and the claim, allegation, or information is false.

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

The Customers, who chose to exchange a fixed annuity plan for a variable annuity plan, had been fully informed as to the new plan's terms, which included a 10-day right-of rescission. The Customers received and executed an Exchange Letter which acknowledged the exchange and also acknowledged a 7-year surrender penalty. When Claimant left Respondent's employ and the Customers wished to have the plan switched to Claimant's new firm, the switch would require the payment of the surrender fee. The Customers thereupon filed a complaint alleging that the original exchange documents had been forged by Claimant and that the Customers had never intended to make the switch from fixed to variable annuity. However, over the course of the approximately six years during which the variable annuity plan was in effect before Claimant left the firm, numerous transactions pursuant to the terms of the variable annuity plan had been initiated and authorized by the Customers. These were regularly confirmed by Claimant's firm, and never challenged by the Customers. This was a non-discretionary account, Claimant received no financial benefit from the Customers' choice to switch from fixed to variable annuities, had no reason at all to do so, and would have suffered disastrous consequences to his 29-year career in the financial industry if he had risked the action the Customers alleged.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1174770 from registration records maintained by the CRD for Claimant Donald Michael Albach (CRD Number 1812200) with the understanding that, pursuant to Notice to Members 04-16, Claimant Donald Michael Albach 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; and the claim, allegation, or information is false.

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

The Customer was a highly sophisticated pension consultant who wished to avoid possible liability in connection with pension accounts of certain of the Customer's clients for which his firm served as plan administrator. He met with Claimant, and it was determined that because, at that time, Claimant worked in the individual market, the Customer was referred to Respondent's Group Pension Plan division in Denver, Colorado. Claimant was paid a referral fee and continued thereafter only as a liaison and contact person, but all paperwork, including the initial documentation and processing over a period of some five years, were handled by the Denver office. After Claimant had moved to a new firm the Customer wished to remove his account from Respondent and requested a waiver of the surrender fee, claiming that the signatures on the original application documents were forged. Upon Respondent's review and denial of the request, the Customer filed his complaint, again denied by Respondent. In response to the Customer's filing with the New York Insurance Department, Respondent denied the allegation, but agreed to waive the surrender fee. Claimant had no part in any these determinations concerning this account, received no financial benefit from this account other than the referral fee, had no reason to forge signatures on any documents, and was aware that such action would have resulted in disastrous consequences to his career and reputation.

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 events giving rise to the dispute. Accordingly, as a party, Respondent MSI Financial Services, Inc. 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) hearing session on expungement request @ \$1,150.00/session | = \$ | 1,150.00 |
| Hearing: February 3, 2022 | | 1 session |
| <hr/> | | |
| Total Hearing Session Fees | = \$ | 1,150.00 |

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

Joan M. Traub

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Sole 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.

Arbitrator's Signature

Joan M. Traub

Joan M. Traub
Sole Non-Public Arbitrator

02/17/2022

Signature Date

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.

February 18, 2022

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