

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Frank A. Delli Carpini

Case Number: 21-01881

vs.

Respondent  
Belle Haven Investments, L.P.

Hearing Site: New York, New York

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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 Frank A. Delli Carpini: David I. Hantman, Esq., Bressler, Amery & Ross, P.C., New York, New York.

For Respondent Belle Haven Investments, L.P.: Brian J. Palmeri, Esq., Winget Spadafora Schwartzberg, LLP, Stamford, Connecticut.

**CASE INFORMATION**

Statement of Claim filed on or about: July 23, 2021.

Frank Anthony Delli Carpini signed the Submission Agreement: July 23, 2021.

Statement of Answer filed by Respondent on or about: August 5, 2021.

Belle Haven Investments, L.P. signed the Submission Agreement: August 5, 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 1685292, 1094975, 1021689 and 666530.

In the Statement of Answer, Respondent requested that all forum and arbitrator fees be assessed against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

By correspondence dated August 17, 2021, the parties advised FINRA Dispute Resolution Services of their agreement to proceed with a single arbitrator in this matter.

By Affirmation dated September 22, 2021, Claimant advised that the customers in Occurrence Numbers 1685292, 1094975, 1021689 and 666530 ("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 October 18, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The Customers in Occurrence Numbers 1685292, 1094975 and 666530 did not participate in the expungement hearing. The Arbitrator found that the Customers in Occurrence Numbers 1685292, 1094975 and 666530 had notice of the expungement request and hearing.

The Customer in Occurrence Number 1021689 participated in the expungement hearing and opposed the expungement request. Additionally, the Customer made a written submission opposing the expungement request on October 18, 2021.

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 reviewed the settlement documentation related to Occurrence Number 1685292, 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. The Arbitrator also noted that Claimant contributed to the settlement amount. The Arbitrator found that expungement is still warranted as Claimant's contribution to the settlement was a fraction of the total damages sought and represented a business decision in order to avoid costly and protracted litigation. Additionally, no admission of liability was made.

The Arbitrator did not review the settlement document in Occurrence Number 1094975. The Arbitrator noted that due to the age of the complaint, the settlement document had been destroyed. The arbitrator considered the settlement amount and noted that the date of the settlement preceded the effective date of the rule against conditioned settlements. The Arbitrator also noted that Claimant contributed to the settlement amount. The Arbitrator found that expungement is still warranted as Claimant's contribution to the settlement was a fraction of the total damages sought and represented a business decision in order to avoid costly and protracted litigation. Additionally, no admission of liability was made.

The Arbitrator noted that the disputes related to Occurrence Numbers 1021689 and 666530 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: Claimant's testimony; the exhibits, including but not limited to, the settlement agreement in Occurrence Number 1685292, the written complaints, responses to the complaints, account history, systems notes, correspondence, results of investigations into complaints, account statements, trade confirmations, and the customer profiles.

### **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 Number 1685292 from registration records maintained by the CRD for Claimant Frank A. Delli Carpini (CRD Number 2156928) with the understanding that, pursuant to Notice to Members 04-16, Claimant Frank A. Delli Carpini 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 Arbitrator found that the evidence submitted in the form of testimony from Claimant, options application by the Customer, account analysis, correspondence from the Customer, response to the complaint, and the settlement agreement and account information, demonstrate that the claims were factually impossible, clearly erroneous and false.

This matter involved a mother ("Customer") acting on behalf of herself and her son. The Customer articulated her investment objective to be "growth," and indicated that she wanted more trading activity to generate higher returns. In fact, she authorized Claimant to have discretionary trading authority on the accounts. At all times, the Customer received monthly account statements and confirmations of all trades. Claimant and the Customer spoke frequently on the phone and met 5-6 times per year to discuss the accounts. The Customer was a knowledgeable investor who encouraged aggressive activity on the accounts based upon her stated desire for higher returns. Claimant and the Customer discussed that her spending habits could not be supported by her accounts in the long term.

The Customer requested that Claimant recommend more aggressive trading opportunities in her portfolio. This instruction was given to Claimant during a phone call that the Customer's accountant also participated in. Following this conversation, the Customer confirmed in writing to Claimant and his firm, that she wanted a shift in investment strategy toward investing in equities.

At all times the Customer was aware of and approved the investment strategy undertaken on the accounts.

Nevertheless, the Customer filed a complaint alleging an unsuitable investment and a decline in value of her account. An investigation was conducted by the firm, which denied all liability. Nevertheless, along with the firm, Claimant and his former employer agreed to a settlement of 7.5% of the alleged damages, a large portion of which his firm agreed to assume. Claimant assumed payment of 1.2% of the damages alleged.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1094975 from registration records maintained by the CRD for Claimant Frank A. Delli Carpini (CRD Number 2156928) with the understanding that, pursuant to Notice to Members 04-16, Claimant Frank A. Delli Carpini 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 Arbitrator found that the evidence submitted in the form of testimony from Claimant and account documents demonstrate that the claim was factually impossible, clearly erroneous and false.

All accounts held by the Customer were non-discretionary accounts in which she had to review and approve all transactions. Monthly account statements and confirmations of all transactions were provided to the Customer. Her investment objectives were stated to be long term growth with moderate risk. The Customer made all trading decisions, and Claimant and the Customer spoke regularly to review her accounts and performance. After the market crash in August 2002, the Customer complained to Smith Barney that the securities recommended, which she reviewed and approved, and which were profitable for a time during the significant market volatility were unsuitable. However, Claimant recommended at some point that the Customer sell many of these positions, but the Customer declined in order to avoid capital gains taxes. The claim was settled in order to avoid protracted litigation including the large amount of claims related to the WorldCom Enron collapse. The settlement agreement was not available from Smith

Barney who no longer retains records from this period of time. Claimant paid only \$5,000 of a \$75,000 settlement.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1021689 from registration records maintained by the CRD for Claimant Frank A. Delli Carpini (CRD Number 2156928) with the understanding that, pursuant to Notice to Members 04-16, Claimant Frank A. Delli Carpini 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:

This complaint made by the Customer was premised upon her reported complaint that she incurred tax consequences of capital gains distributions related to the sale of a fund. The Customer participated in the expungement hearing. The Customer’s complaint was investigated by Smith Barney and was denied. The investigation revealed that Claimant had discussed the capital gains tax consequences with the Customer, but that since she had significant losses on equity positions, which were used to offset the gain, the purchase had no taxable impact. According to the records submitted, including, the written complaints, account history statements, complaint form, response to complaints, and according to the Customer’s testimony, she accepted the explanation.

Thereafter, the Customer filed an online complaint with NASD, alleging for the first time that Claimant had made unauthorized transactions. Following an investigation by NASD, the complaint was closed without any action taken against Smith Barney or Claimant.

The Arbitrator found that this occurrence should be expunged as the evidence submitted reveals that the basis for the complaint was essentially a decline of a mutual fund. The Customer approved the sale of the fund and admitted during testimony that while she did not recall a conversation about tax consequences related to the sale of the fund, she would not have understood the explanation regardless. Claimant recalled conversations with the Customer in which the nature and risks of the sale were discussed. Claimant testified that he explained that the sale of the fund would result in a capital gains declaration, but that losses from the sales would offset the declaration. According to Claimant, the Customer agreed to proceed with the sale of the subject fund.

Prior to making the complaint, the Customer called Claimant to inquire as to the capital gains distribution. Claimant reiterated his prior conversation about the offset from the losses, and the Customer was satisfied and remained invested. The testimony reveals that in accordance with firm protocol, a risk tolerance worksheet would have been made

with the Customer, and discussions between Claimant and the Customer were had to determine objectives and goals. The account activity at issue was in accordance with the Customer's stated and demonstrated risk tolerance. Further, the Customer was provided with monthly account statements and was required to approve all transactions on her account. The Customer's reported complaints about unauthorized transactions are not supported by the evidence submitted in the form of the investigations undertaken by Smith Barney and NASD, or the testimony during the hearing. Further, the Customer admitted that in any event, she would likely have not understood the explanation provided to her at that time. Expungement of this complaint is recommended as the complaint by the Customer is factually impossible or clearly erroneous and false. Further, there is no evidence that Claimant was involved in any sales practice violation.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 666530 from registration records maintained by the CRD for Claimant Frank A. Delli Carpini (CRD Number 2156928) with the understanding that, pursuant to Notice to Members 04-16, Claimant Frank A. Delli Carpini 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 evidence submitted in the form of testimony from Claimant, system notes, complaint letter, denial of complaint letter, and trade tickets, demonstrate that the claim was factually impossible, clearly erroneous and false. Further, there is no evidence that Claimant was involved in any sales practice violations.

The Customer was a retired investor actively involved with his accounts and investment. An investment strategy recommended by Claimant was approved in writing by the Customer which would focus on fixed income investments to provide a steady stream of income to support his retirement. The purchase of funds was in line with the recommended strategy and was approved by the Customer. The Customer also received monthly statements and confirmations of all transactions. Claimant was in regular contact with the Customer and regularly reviewed the accounts and strategy.

The Customer complained that Claimant placed an unsolicited order for bonds and that the price he paid was too high. The firm addressed the concerns with the Customer who understood the explanation about the trading prices for bonds versus the offering price, but he continued to believe he paid too much. Thereafter the Customer again complained about the cost of the bonds and the complaint was investigated by Smith Barney, discussed with branch management and with the customer, and discussed with Claimant

to review the trading data. At the conclusion of the investigation, Smith Barney determined that the compliant had no merit, and stated that its review of the municipal bond purchases reflected that the prices paid were correct and the fees were within industry guidelines and not excessive. In addition, Smith Barney found that the bond purchases were consistent with the Customer's investment objective as part of a long-term strategy. Importantly, Claimant had no role in pricing the bonds. Accordingly, expungement of this complaint is recommended.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

|                        |               |
|------------------------|---------------|
| Expungement 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 Belle Haven Investments, L.P. is assessed the following:

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|--------------------|---------------|
| 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:

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|---|---------------|
| One (1) hearing session on expungement request @ \$1,150.00/session | = \$ 1,150.00 |
| Hearing: October 18, 2021 1 session                                 |               |

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| Total Hearing Session Fees | = \$ 1,150.00 |
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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**

Susan Romano

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

***Susan Romano***

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Susan Romano  
Sole Public Arbitrator

**11/05/2021**

\_\_\_\_\_  
Signature Date

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November 05, 2021

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