

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James Robert Boyer

Case Number: 21-01907

vs.

Respondent
Key Investment Services LLC

Hearing Site: Albany, New York

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 James Robert Boyer: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent Key Investment Services LLC: Andrew P. Karamouzis, Esq., Moran Karamouzis LLP, Rockville Center, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 26, 2021.

James Robert Boyer signed the Submission Agreement: July 26, 2021.

Statement of Answer filed by Respondent on or about: September 30, 2021.

Key Investment Services LLC signed the Submission Agreement: October 28, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 2069148 and 2137039.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

The parties agreed that pursuant to Rule 13401(c) of the Code of Arbitration Procedure, this matter would be decided by one Arbitrator.

On January 14, 2022, Claimant advised that the customers in Occurrence Numbers 2069148 and 2137039 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 17, 2022, 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 2069148 and 2137039 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 2137039, 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 dispute related to Occurrence Number 2069148 was not settled and, therefore, there was no settlement document to review.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 2069148 from registration records maintained by the CRD for Claimant James Robert Boyer (CRD Number 4157163) with the understanding that, pursuant to Notice to Members 04-16,

Claimant James Robert Boyer 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:

In March 2020, the customer filed a complaint with Respondent alleging that Claimant’s advice to “sit tight for now” with respect to the market fluctuations in his account resulting from the COVID pandemic caused the losses in his account. The market conditions resulting from the global COVID pandemic were unique and unprecedented in modern times. The customer and Respondent communicated over a period of weeks, on numerous occasions via phone and text, regarding the status of the customer’s account and its value. The customer was fully aware that the decision to sell was his and his alone. An investigation conducted by the Respondent proved that no unauthorized transactions were placed in the customer’s account and that there was no basis to grant any offer of restitution for the customer losses. The customer never pursued the complaint any further. While the customer was clearly unhappy about the outcome of his decision to sell out his mutual fund positions, there was not wrongdoing on the part of the Claimant.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 2137039 from registration records maintained by the CRD for Claimant James Robert Boyer (CRD Number 4157163) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Robert Boyer 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:

In May of 2021, the customers filed a complaint with Respondent alleging that Claimant’s advice to continue to hold a municipal bond whose issuer had encountered financial

difficulties was the cause of the loss the customers experienced on their bond. The customers requested that Respondent find them an individual municipal bond to purchase with the proceeds of a maturing CD. Respondent advised the customers that a bond fund would be less risky than an individual bond. The customers insisted on the purchase of an individual bond. Claimant purchased the customers an A-rated bond. The issuer ultimately defaulted on the bond. The financial difficulties of the issuer were unknown to Claimant or the general public at the time of purchase. Again, when asked by the customers whether they should sell or hold the bond Claimant advised that in his opinion it would be better to hold the bond. The customers agreed to hold the bond despite the knowledge of the issuer's financial difficulties. Respondent decided to make the decision to settle with the customers rather than expend the cost of litigation. Claimant was not a part of such settlement, nor did he contribute to the settlement. Again, while the customers were not happy with the ultimate default by the issuer, Claimant had no knowledge of or could have reasonably foretold the financial difficulties of the issuer.

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 Key Investment Services LLC 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 17, 2022 1 session

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

Stuart M. Schwartz

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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

Stuart M. Schwartz

Stuart M. Schwartz
Sole Public Arbitrator

02/23/2022

Signature Date

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February 23, 2022

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