

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Alicia M. Hinojosa Gutierrez

Case Number: 21-01920

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Incorporated

Hearing Site: New York, 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

This matter was decided by an all-public panel pursuant to Rule 13802 of the Code of Arbitration Procedure (“Code”).

REPRESENTATION OF PARTIES

For Claimant Alicia M. Hinojosa Gutierrez: Daniel J. Kaiser, Esq., Kaiser Saurborn & Mair, P.C., New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Incorporated: Kathryn D. Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Amended Statement of Claim filed on or about: August 27, 2021

Alicia M. Hinojosa Gutierrez signed the Submission Agreement: July 27, 2021.

Statement of Answer to the Amended Statement of Claim filed by Respondent on or about:
December 11, 2021

Merrill Lynch, Pierce, Fenner & Smith Incorporated signed the Submission Agreement:
September 29, 2021.

CASE SUMMARY

In the Amended Statement of Claim, Claimant asserted the following causes of action: discrimination based on gender; retaliation; violation of Executive Law §296; violation of New York City Administrative Code §8-502(a); and expungement of Form U5 termination entry based

on the defamatory nature of the entry in Claimant's Central Registration Depository ("CRD") records.

In the Statement of Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested compensatory damages in an amount to be determined at hearing; punitive damages; expungement of Claimant's Form U5 removing the false and defamatory explanation for Claimant's termination; attorney fees, disbursements and interest; and such other relief as deemed just and proper.

In the Statement of Answer to the Amended Statement of Claim, Respondent requested that the Amended Statement of Claim be denied in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The original Statement of Claim was filed on July 28, 2021. An Amended Statement of Claim was filed on August 27, 2021. The Statement of Claim filed on July 28, 2021 was not served on Respondent and therefore was not considered by the Panel.

By correspondence dated January 21, 2022, Claimant advised the Panel that the parties reached a settlement of this matter except for Claimant's request for expungement. Therefore, the Panel made no determination with respect to any of the other relief requests contained in the Amended Statement of Claim.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of her registration records maintained by the CRD is 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
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**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 Merrill Lynch, Pierce, Fenner & Smith Incorporated is assessed the following:

Member Surcharge	= \$	2,000.00
Member Process Fee	= \$	3,850.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, 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
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Hearing:	February 15, 2022	1 session
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Total Hearing Session Fees	= \$	1,150.00
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The Panel has assessed \$575.00 of the hearing session fees to Claimant.

The Panel has assessed \$575.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Judith C. Zerden	-	Public Arbitrator, Presiding Chairperson
Phillip Weitzman	-	Public Arbitrator
Serge Krimnus	-	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.

Concurring Arbitrators' Signatures

Judith C. Zerden

Judith C. Zerden
Public Arbitrator, Presiding Chairperson

03/10/2022

Signature Date

Phillip Weitzman

Phillip Weitzman
Public Arbitrator

03/10/2022

Signature Date

Serge Krimnus

Serge Krimnus
Public Arbitrator

03/10/2022

Signature Date

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March 11, 2022

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