

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Aubrey Jones Rosser III

Case Number: 21-01933

vs.

Respondent
Northwestern Mutual Investment Services, LLC

Hearing Site: Washington, D.C.

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 Aubrey Jones Rosser III: Ariel Okonsky, Esq. and Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Northwestern Mutual Investment Services, LLC: Thomas K. Anderson, Esq., Northwestern Mutual, Milwaukee, Wisconsin.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2021.

Aubrey Jones Rosser III signed the Submission Agreement: July 28, 2021.

Statement of Answer filed by Respondent on or about: September 17, 2021.

Northwestern Mutual Investment Services, LLC signed the Submission Agreement: September 17, 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 request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1618024, and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent did not delineate any specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about January 31, 2022, Claimant advised that the customer in Occurrence Number 1618024 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about February 7, 2022, Claimant filed with FINRA Dispute Resolution Services an Affidavit of Service, along with proof of service via FedEx, advising that the Customer was 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 March 15, 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 Claimant’s request for expungement.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 1618024 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: Claimant’s testimony in support of the application; various materials in the Customer’s files provided by Claimant that were pertinent to the Customer’s application and subsequent purchase of the variable annuity in question; Claimant’s Exhibits 2, 3, 6 and 7; and Respondent’s investigation in which the Customer’s claim was denied.

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 1618024 from registration records maintained by the CRD for Claimant Aubrey Jones Rosser III (CRD Number 5263007) with the understanding that, pursuant to Notice to Members 04-16, Claimant Aubrey Jones Rosser III 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.

The claim, allegation, or information is false.

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

The Customer’s complaint alleges that Claimant failed to disclose that a front-end sales charge would be owing in connection with the Customer’s purchase of a variable annuity from Respondent. The Arbitrator found on the evidence that (1) Claimant did in fact adequately disclose the front-end charge, and (2) such disclosure was acknowledged by the Customer. It is possible the Customer was confused by the presence of an annual expense charge associated with the product the Customer purchased along with the one-time front-end sales charge; however, the Arbitrator found that such confusion, if it existed, was not due to any lack of Claimant having made appropriate disclosure. The Customer continued to hold the variable annuity in question for some nine years following the filing of the complaint, and the variable annuity increased substantially in value during this time. The variable annuity was liquidated as part of a court ordered division of property that stemmed from a divorce. The Arbitrator further found that Claimant has suffered, and would continue to suffer, reputational damage and potential loss of client opportunities as a result of the continued presence of Occurrence Number 1618024 on Claimant’s record, and that no public interest is served by maintaining a record of this complaint on the public record. The alleged complaint is false and clearly erroneous. The Arbitrator determined that the Customer was served with a copy of Claimant’s Statement of Claim and notice of the expungement hearing date and, despite ample opportunity to do so, did not appear at the expungement hearing in this matter or otherwise submit a response.

2. Any and all claims for relief not specifically addressed herein are 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(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	= \$	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) pre-hearing session with a single Arbitrator @ \$1,150.00/session	= \$	1,150.00
Pre-Hearing Conference: November 17, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: March 15, 2022	1 session	
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Total Hearing Session Fees	= \$	2,300.00

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

Richard P. Regan

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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

Richard P. Regan

Richard P. Regan
Sole Public Arbitrator

03/16/2022

Signature Date

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March 16, 2022

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