

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

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In the Matter of the Arbitration Between:

Claimant  
Jared Philip Zuflacht

Case Number: 21-02004

vs.

Respondent  
Merrill Lynch, Pierce, Fenner & Smith Inc.

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

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Jared Philip Zuflacht: Seth E. Lipner, Esq., Deutsch & Lipner, Garden City, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: Katelyn H. Wilson, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: August 4, 2021.

Jared Philip Zuflacht signed the Submission Agreement: August 4, 2021.

Statement of Answer filed by Respondent on or about: September 20, 2021.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: September 20, 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 and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2104993.

In the Statement of Answer, Respondent objected to any request for compensatory damages.

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

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

On October 7, 2021, the parties filed a joint letter advising FINRA Dispute Resolution Services of their agreement to proceed with a single arbitrator in this matter pursuant to Rule 13401(c) of the Code of Arbitration Procedure.

On November 29, 2021, Claimant advised that the customer in Occurrence Number 2104993 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on February 2, 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 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 also reviewed the settlement documentation related to Occurrence Number 2104993, 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.

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

### **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 2104993 from registration records maintained by the CRD for Claimant Jared Philip Zuflacht (CRD Number 4600260) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Jared Philip Zuflacht 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 became Claimant’s client in 2009. She was seeking growth with a secured income stream. After extensive discussions with her, Claimant recommended, and she purchased, a \$15,000 variable annuity. She completed all necessary paperwork and disclosures in connection with the purchase. Claimant reviewed the account with her at least annually until Claimant left Respondent in 2013. In 2020, she filed a FINRA arbitration alleging unauthorized trading. Respondent settled the matter for a nominal sum to avoid the cost of defense. Claimant did not contribute to the settlement, which was not conditioned on consent to expungement. This Occurrence should be expunged on the ground that that it is clearly erroneous, factually impossible and or false. The purchase of the annuity was entirely suitable and completely authorized and approved by the Customer, and it performed well over time. The record also establishes that the Customer did not update her address with the firm and as a result did not receive notices concerning her required minimum distributions.

**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 Merrill Lynch, Pierce, Fenner & Smith Inc. is assessed the following:

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



**ARBITRATOR**

Robert E. Anderson

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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**

***Robert E. Anderson***

Robert E. Anderson  
Sole Public Arbitrator

***02/07/2022***

Signature Date

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February 08, 2022

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