

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Steven P. McTaggart

Case Number: 21-02023

vs.

Respondent
Merrill Lynch Pierce Fenner & Smith, Inc.

Hearing Site: Tampa, Florida

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 Steven P. McTaggart: John D. Stewart, Esq., Baritz & Colman LLP, New York, New York.

For Respondent Merrill Lynch Pierce Fenner & Smith, Inc.: Joel M. Everest, Esq. and Kathryn Perreault, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim for Expungement filed on or about: August 5, 2021.
Steven P. McTaggart signed the Submission Agreement: August 5, 2021.

Statement of Answer filed by Respondent on or about: September 27, 2021.
Merrill Lynch Pierce Fenner & Smith, Inc. signed the Submission Agreement: September 27, 2021.

CASE SUMMARY

In the Statement of Claim for Expungement, Claimant asserted the cause of action of defamation in connection with information placed by Respondent on Claimant's Central Registration Depository ("CRD") upon Claimant's termination of employment.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim for Expungement, Claimant requested an order recommending that: (a) Claimant be awarded the sum of \$1.00, and (b) Claimant's CRD record, including his Form U5, be modified as follows: (1) the "Reason for Termination" in Section 3 and the DRP of Claimant's Form U5 be modified to reflect "Voluntary;" (2) the "Termination Explanation" in Section 3 and the DRP of Claimant's Form U5 be deleted in its entirety; and (3) The termination language be expunged from any other reference in Claimant's CRD record, including without limitation his Form U4.

In the Statement of Answer, Respondent requested denial of Claimant's request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 27, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On December 10, 2021, Claimant filed a response opposing the Motion to Dismiss. On December 29, 2021, Respondent filed a reply in support of its Motion to Dismiss. On March 11, 2022, the Arbitrator heard oral arguments on the Motion to Dismiss and granted the Motion to Dismiss, stating that:

"I grant the Motion to Dismiss on eligibility grounds. I find the occurrence giving rise to the claim was publication of the Form U5, which happened well before six years prior to the Statement of Claim. The possibility the U5 was viewed subsequently does not create a new occurrence or start a new eligibility period. Claimant asks me to consider that the policy violation cited in the U5 was done for the benefit of the client, and that the client subsequently ratified the action taken. However, because I have ruled the claim is ineligible for arbitration I am without the power to consider the underlying merits. The Motion to Dismiss is granted and the claim is dismissed."

Respondent's Motion to Dismiss pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

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

1. Claimant's Statement of Claim is dismissed pursuant to Rule 13206 of the Code.
2. Any and all claims for relief not specifically addressed herein are dismissed without prejudice.

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 = \$ 50.00

**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(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 = \$ 150.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

November 29, 2021, cancellation requested by parties = \$ 100.00

January 7, 2022, cancellation requested by Respondent WAIVED

Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fee to Claimant and \$50.00 to Respondent in connection with the November 29, 2021 pre-hearing conference.

The Arbitrator has waived the late pre-hearing cancellation fee in connection with the January 7, 2022 pre-hearing conference.

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 @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: March 11, 2022 1 session

Total Hearing Session Fees = \$ 50.00

The Arbitrator has assessed the total hearing session fees of \$50.00 to Claimant.

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

ARBITRATOR

Langfred W. White

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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

Langfred W. White

Langfred W. White
Sole Public Arbitrator

03/15/2022

Signature Date

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March 15, 2022

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