

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Dennis Michael Franklin

Case Number: 21-02026

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Los Angeles, California

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 Dennis Michael Franklin: Simon Levy, Esq., Keesal, Young & Logan, Long Beach, California.

For Respondent Wells Fargo Clearing Services, LLC: Geoff Beckham, Esq., Wells Fargo Legal Department, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: August 5, 2021.

Claimant signed the Submission Agreement: August 5, 2021.

Statement of Answer filed by Respondent on or about: September 28, 2021.

Respondent signed the Submission Agreement: September 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 took no position on Claimant’s expungement request and denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2096888 from all of his registration and/or regulatory records, including, without limitation, his CRD records, BrokerCheck® Report, and Forms U4 and U5 pursuant to FINRA Rule 2080 and Notice to Members 04-16; and
2. Compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested:

1. Claimant's request for \$1.00 in compensatory damages be denied; and
2. All forum and hearing fees assessed in connection with this matter, as required by FINRA Rule 13805(d), be assessed to Claimant.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 29, 2021, the parties agreed to proceed with a single arbitrator for this matter.

On December 13, 2021, Claimant advised that the customer in Occurrence Number 2096888 ("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 February 16, 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 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 noted that the dispute related to Occurrence Number 2096888 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Claimant's BrokerCheck® Report; Claimant's hearing exhibits; and Claimant's 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:

The Arbitrator recommends the expungement of all references to Occurrence Number 2096888 from registration records maintained by the CRD for Claimant Dennis Michael Franklin (CRD Number 1584691) with the understanding that, pursuant to Notice to Members 04-16, Claimant Dennis Michael Franklin 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

In Occurrence Number 2096888, the Customer’s claim that Claimant made inappropriate transfers from a decedent’s banking accounts to the decedent’s daughter’s accounts without authorization is clearly erroneous and false. Claimant also could not have been involved in the alleged misappropriation of funds.

On October 16, 2020, the Customer filed a lawsuit in state court alleging that Claimant, without authorization, transferred and facilitated the misappropriation of approximately \$331,378.02 in funds from the Wells Fargo Bank checking account of decedent’s trust for which the Customer served as trustee. On January 29, 2021, the Customer voluntarily dismissed his state court action.

Claimant was and continues to be a certified financial planner employed by Wells Fargo Advisors, the wealth management and brokerage entity managed separately from Wells Fargo Bank. Claimant therefore had no access to or control of accounts maintained by Wells Fargo Bank, such as the decedent’s checking accounts cited in the customer complaint.

Claimant followed and performed his duties as a representative in an ethical and professional manner, exercised reasonable diligence in ascertaining suitability of investments, and acted in the best interests in furtherance of the financial objectives of the Customer in the referenced occurrence.

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(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) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: February 16, 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

Erik R. Siering

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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

Erik R. Siering

Erik R. Siering
Sole Public Arbitrator

02/18/2022

Signature Date

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.

February 18, 2022

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