

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Paul Robert DiPietro

Case Number: 21-02027

vs.

Respondent
Investors Capital Corp.

Hearing Site: Boca Raton, 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 Paul Robert DiPietro: Jennifer P. Farrar, Esq., Farrar Law, PLLC, Tomball, Texas.

For Respondent Investors Capital Corp.: Benjamin J. Biard, Esq., Winget, Spadafora & Schwartzberg, LLP, Miami, Florida.

CASE INFORMATION

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

Paul Robert DiPietro signed the Submission Agreement: August 4, 2021.

Statement of Answer filed by Respondent on or about: September 27, 2021.

Investors Capital Corp. signed the Submission Agreement: September 27, 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 and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 1390207, 1560218 and 1616321; and any and all other relief that the Arbitrator deemed just and equitable.

In the Statement of Answer, Respondent requested: that the Arbitrator issue a statement on the issue of whether to order recommending that the customer complaints be expunged from Claimant's CRD records in the form required by FINRA Rule 2080; and that all forum costs and fees be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about January 14, 2022, Claimant advised that the customers in Occurrence Numbers 1390207, 1560218 and 1616321 ("Customer A, Customer B and Customer C") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about January 14, 2022, Claimant filed with FINRA Dispute Resolution Services a Declaration Regarding Service, along with proof of service via USPS and via FedEx, confirming that Customer A, Customer B and Customer C were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On or about January 24, 2022, and January 25, 2022, Respondent filed with FINRA Dispute Resolution Services notices to serve as confirmation that Respondent will not participate in the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 26, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers 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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1390207, 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 contributed to the settlement amount.

The Arbitrator noted that the dispute related to Occurrence Number 1560218 was not settled and, therefore, there was no settlement document to review.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1616321, 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: Claimant's credible testimony; Claimant's Expungement Hearing Exhibits; Respondent's notices that Respondent will not participate in the expungement hearing; Claimant's Declaration Regarding Notice to Customers; and the Parties' Joint Stipulation and Order Regarding Liability, Damages, Discovery and Confidentiality.

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 Numbers 1390207, 1560218 and 1616321 from registration records maintained by the CRD for Claimant Paul Robert DiPietro (CRD Number 4313454) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Robert DiPietro 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:

Claimant began his career at the age of twenty-three. Claimant has Series 7 and Series 65 licenses. Claimant is currently enrolled in school to become a Certified Financial Planner ("CFP"). Claimant will be taking the exam in March of 2022. Claimant's clients are important to him, and Claimant has changed his focus in order to better serve his clients. Also, Claimant is aware that the CRD is reviewed by prospective and current clients and has decided to expunge three complaints. This is the first time Claimant has requested expungement of these three complaints. Claimant worked at GunnAllen Financial, Inc. ("GunnAllen"), then Chicago Investment Group, LLC ("CIG") from 2005 to 2007, and then for Respondent from 2007 to 2011. CIG no longer exists. According to its CRD, it was expelled by FINRA in 2010.

Claimant helped a childhood friend become a financial broker ("Broker A"). Broker A worked on Broker A's own initially and eventually Claimant and Broker A worked together

and had joint accounts. Claimant and Broker A's relationship ended in 2011. The three complaints are addressed separately below:

Occurrence Number 1390207

Customer A was in the construction business and built homes in Louisiana after Hurricane Katrina. Claimant testified that Customer A was a successful businessman and took risks. Broker A met Customer A when Broker A was prospecting for leads. Broker A originally opened an account and purchased Gateway, Inc. ("GTW") computer stock. While other tech stocks were doing well, GTW was not. Claimant helped with the account and sold GTW at a loss and purchased Apple ("AAPL") stock. Customer A had an up and down relationship with Claimant. When Claimant went to work at CIG, Customer A contacted Claimant and challenged Claimant to grow Customer A's accounts. Customer A also increased Customer A's investment by adding an additional amount of money. Customer A's accounts were up when Claimant left CIG. The accounts did fluctuate as did the market. Customer A's accounts were then handled by two other brokers ("Broker B and Broker C"). Broker B and Broker C dismantled the accounts. It was then that Customer A decided to transfer Customer A's accounts back to Claimant at Respondent. In 2010, Customer A filed Customer A's Statement of Claim and named CIG, Claimant, Broker A, Broker B and Broker C alleging an amount of damages. Claimant had an insurance policy to cover such claims. At this time, CIG was experiencing trouble with FINRA and its failure to comply as a member. The case went to mediation and was settled. Claimant did not sign the Settlement Agreement ("Settlement Agreement"), Claimant's attorney signed on Claimant's behalf. Claimant also testified that he did not have a say in mediation as to the allocation of the settlement proceeds. The case settled, and an amount of that settlement was allocated to Claimant and Broker A. Under this policy of insurance, there was a deductible. Claimant paid this deductible amount to Claimant's attorney, and Claimant testified that Claimant did not make any payment directly to Customer A. Claimant testified that Customer A would approach Claimant about switching firms or investing more funds. Claimant also testified that Claimant believes the claim was made as a result of what happened after Broker B and Broker C took over the accounts and not what Claimant had done as the accounts had a net gain when Claimant left CIG. Based on the uncontroverted testimony of Claimant and Claimant's exhibits related to this complaint, Occurrence Number 1390207 should be expunged, as Claimant did not commit fraud, breach Claimant's fiduciary duty or commit negligence or gross negligence as alleged in Customer A's Statement of Claim. Based on FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(B), expungement is proper.

Occurrence Number 1560218

Customer B was a young entrepreneur with assets. On March 23, 2011, Customer B wrote a letter alleging that Claimant "violated several regulatory rules." The letter claimed high pressure sales tactics and claimed Customer B's Individual Retirement Account ("IRA") went down. Claimant testified that Claimant provided the letter to Claimant's supervisor and compliance officer ("Supervisor A") at Respondent who investigated the matter. Claimant testified that as with all clients, Claimant gets to know them before opening any accounts so that Claimant can properly make suitable recommendations and provide a standard presentation. Customer B stated Customer B's investment objective and risk exposure as speculative/short term growth. After Supervisor A's review

of the matter, Supervisor A wrote a letter to Customer B and denied the claim and any wrongdoing on the part of Claimant. The denial letter explained there were two trades back in 2007 and the other allegations happened at a prior broker dealer. This was the only time that Customer B complained. Customer B did not pursue the matter and no settlement was made. Based on the uncontroverted testimony of Claimant and Claimant's exhibits related to this complaint, Occurrence Number 1560218 should be expunged, as Claimant was not the broker who dealt with Customer B as alleged in the letter. Based on FINRA Rules 2080(b)(1)(A), 2080(b)(1)(B) and 2080(b)(1)(C), expungement is proper.

Occurrence Number 1616321

Customer C is the aunt of Broker A. Customer C's Statement of Claim was only against Claimant and not Broker A. Claimant was friends and socialized with Broker A and Broker A's family, including Customer C. Initially, Claimant opened an account at Customer C's insistence and purchased "QQQ," an Exchange-Traded Fund ("ETF"). The account made money, and Customer C was very happy. Later when Broker A and Claimant were working at CIG, Broker A opened an account for Customer C. Broker A's signature is on the account forms, not Claimant. Claimant testified that even though they were the joint representatives, Claimant dealt with Claimant's family member accounts and Broker A dealt with Broker A's family member accounts, such as Customer C. Claimant had no supervisor role and it was Supervisor A, who was Claimant's and Broker A's supervisor and compliance officer. Customer C filed a Statement of Claim and alleged damages. Claimant had no involvement in the case handling or settlement. Claimant did not contribute towards the settlement. Claimant had no say in how the case was handled and wanted to fight the false claims. Claimant received no promises or consideration as a result of the settlement. Based on the uncontroverted testimony of Claimant and Claimant's exhibits related to this complaint, Occurrence Number 1616321 should be expunged, as Claimant was not the broker who dealt with Customer C as alleged in Customer C's Statement of Claim. Based on FINRA Rules 2080(b)(1)(A), 2080(b)(1)(B) and 2080(b)(1)(C), expungement is proper.

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: December 17, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: January 26, 2022	1 session	
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

Kimberly A. Gilmour

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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

Kimberly A. Gilmour

Kimberly A. Gilmour
Sole Public Arbitrator

01/27/2022

Signature Date

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January 27, 2022

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