

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michele Ann Misiti

Case Number: 21-02156

vs.

Respondent
Alexander Capital, L.P.

Hearing Site: New York, New York

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 Michele Ann Misiti: Scott Holcomb, Esq., Holcomb + Ward, LLP, Atlanta, Georgia.

For Respondent Alexander Capital, L.P.: Rocco Guidici Pietro, Alexander Capital, L.P., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: August 19, 2021.

Michele Ann Misiti signed the Submission Agreement: August 19, 2021.

Statement of Answer filed by Respondent on or about: October 12, 2021.

Alexander Capital, L.P. signed the Submission Agreement: September 16, 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 supported Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 2132267;

2132264; and 2132266.

In the Statement of Answer, Respondent did not set forth a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 28, 2021, Claimant advised that the customers in Occurrence Numbers 2132267; 2132264; and 2132266 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded hearing by videoconference on January 28, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing and, as stated in the Statement of Answer, supported the request for expungement.

The customers also did not participate in the expungement hearing. The Panel found that the customers had notice of the expungement request and hearing.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documentation related to Occurrence Numbers 2132267; 2132264; and 2132266, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Panel noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

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

AWARD

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

1. The Panel recommends the expungement of all references to Occurrence Numbers 2132267; 2132264; and 2132266 from registration records maintained by the CRD for Claimant Michele Ann Misiti (CRD Number 1931272) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michele Ann Misiti 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 Panel has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Panel has made the above Rule 2080 finding based on the following reasons:

Claimant credibly testified that during the time period at issue for all three customer complaints, she did not serve as the registered representative for any of the accounts or the supervisor for any of the registered representatives involved with the customer accounts, nor did she know the registered representatives. Claimant further testified that she was dismissed by the customers from their complaints and that she was neither asked to participate in or contribute to the settlements with the complaining customers. Also, in its Answer to the Statement of Claim, Respondent stated that Claimant was never the broker of record nor supervisor for the activities at issue.

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 is assessed the following:

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

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,150.00/session = \$ 1,150.00
Pre-Hearing Conference: December 7, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: January 28, 2022 1 session

Total Hearing Session Fees = \$ 2,300.00

The Panel has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Madelon M. Rosenfeld	-	Public Arbitrator, Presiding Chairperson
Mary Julia O'Connell	-	Public Arbitrator
Adam M. Kauff	-	Non-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.

Concurring Arbitrators' Signatures

Madelon M. Rosenfeld

Madelon M. Rosenfeld
Public Arbitrator, Presiding Chairperson

02/02/2022

Signature Date

Mary Julia O'Connell

Mary Julia O'Connell
Public Arbitrator

02/03/2022

Signature Date

Adam M. Kauff

Adam M. Kauff
Non-Public Arbitrator

02/07/2022

Signature Date

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February 07, 2022

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