

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
C. Todd Weissing

Case Number: 21-02274

vs.

Respondent
Merrill Lynch Pierce Fenner & Smith
Incorporated

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 C. Todd Weissing: Lloyd R. Schwed, Esq., Schwed Kahle & Kress, P.A., Tampa, Florida.

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

CASE INFORMATION

Statement of Claim filed on or about: September 7, 2021.

C. Todd Weissing signed the Submission Agreement: August 31, 2021.

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

Merrill Lynch Pierce Fenner & Smith Incorporated signed the Submission Agreement: November 19, 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 138059.

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 or about January 7, 2022, Claimant advised that the customers in Occurrence Number 138059 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On or about January 7, 2022, Claimant filed with FINRA Dispute Resolution Services proof of service upon the Customers, confirming that the Customers were 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 January 20, 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 occurrence in the CRD.

During the pre-hearing conference on December 27, 2021, Respondent advised the Arbitrator that Respondent was unable to locate the Settlement Agreement ("Settlement Agreement") in connection with Occurrence Number 138059. Also, during the expungement hearing, Claimant advised the Arbitrator that Claimant does not have a copy of the Settlement Agreement in Claimant's possession. The Arbitrator noted that Claimant did not contribute to the settlement amount. The Arbitrator determined that no further steps were required in this regard.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: 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 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 138059 from registration records maintained by the CRD for Claimant C. Todd Weissing (CRD Number 726414) with the understanding that, pursuant to Notice to Members 04-16, Claimant C. Todd Weissing 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:

The customer complaint was on September 18, 1995, and was the only complaint against Claimant, who has been engaged by Respondent for forty-one years. The Customers were notified of the expungement hearing and according to counsel for Claimant, who spoke to the son of the Customers, the son said the Customers did not object to this expungement. The basis of the claim according to the CRD is failure to execute a trade and failure to obtain timely account documents from the Customers. Claimant testified that Claimant did execute the trade properly, but that the back office of the broker failed to follow through with the sale of the security that was not discovered for a month. Also, Claimant testified that the account documents were properly submitted as the account would not have been opened without the proper documentation. Claimant was not involved in the conduct that failed to process the trade, and this claim was false and erroneous as well. The other claims were erroneous and false. The original Settlement Agreement with the Customers could not be located, as was stated at the pre-hearing conference on December 27, 2021. At the expungement hearing, Claimant stated the Settlement Agreement was not in possession of Claimant. Claimant did not contribute to the settlement amount. The Arbitrator determined that no further steps were required in this regard.

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
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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 27, 2021	1 session
One (1) hearing session on expungement request @ \$1,150.00/session	= \$ 1,150.00
Hearing: January 20, 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

Mark C. Perry

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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

Mark C. Perry

Mark C. Perry
Sole Public Arbitrator

01/21/2022

Signature Date

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January 21, 2022

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