

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Charles Henry Carson

Case Number: 21-02481

vs.

Respondent
Wells Fargo Clearing Services, LLC

Hearing Site: Birmingham, Alabama

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 Charles Henry Carson: William Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

For Respondent Wells Fargo Clearing Services, LLC: William S. Port, Esq., Wells Fargo Legal Department, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: September 29, 2021.

Charles Henry Carson signed the Submission Agreement: September 29, 2021.

Statement of Answer filed by Respondent on or about: November 2, 2021.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: November 3, 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 expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested a recommendation that all references to Occurrence Number 1851646 be expunged from Claimant's CRD record.

In the Statement of Answer, Respondent requested that all costs and fees associated with this claim be assessed solely against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 29, 2021, Claimant submitted copies of the obituaries for the two customers in Occurrence Number 1851646 ("Customers"). Therefore, the Arbitrator determined that service on the Customers of the Statement of Claim and notice of the date and time of the expungement hearing was excused.

The Arbitrator conducted a recorded hearing by videoconference on January 7, 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.

No representative of the deceased Customers participated in the expungement 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 also reviewed the settlement documentation related to Occurrence Number 1851646, 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 testimony, Claimant's notes, Exhibit C (notes regarding recommendations to the Customers), and Exhibit J and Exhibit K (obituaries for each of the Customers).

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 1851646 from registration records maintained by the CRD for Claimant Charles Henry Carson (CRD Number 6294611) with the understanding that, pursuant to Notice to Members

04-16, Claimant Charles Henry Carson 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 claim, allegation, or information is false.

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

The Customers’ complaint, corresponding to Occurrence Number 1851646, included four (4) allegations: (1) the investment was exposed to the market; (2) the investment had incurred a loss; (3) the investment did not provide liquidity; and (4) the investment was not being liquidated quickly. In his testimony, Claimant addressed each allegation. The Customers chose an investment that was, by nature, exposed to the market in order to generate the desired income and cash flow. Second, the investment loss was entirely due to the surrender charges of an annuity. The Customers chose to close the annuity. Third, during discussions prior to the purchase of the investment, the Customers stated that liquidity was not a requirement. Lastly, the Customers’ outside advisor lacked authorization to communicate and deal with the investment provider.

Claimant maintained explicit and very accurate notes which detailed each conversation and communication with the Customers. The Arbitrator found Claimant's testimony to be credible.

The Arbitrator found the Customers’ claims and allegations to be factually impossible and clearly erroneous. Additionally, the Arbitrator found that the Customers’ claims and allegations are false. The Customers’ claims and allegations were directed and guided by an outside advisor whose intentions and motives were questionable and self-serving. The Arbitrator believes that the Customers would have likely met their investment goals and would not have incurred annuity surrender charges if they had not been influenced and directed by the outsider advisor.

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:

Expungement 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 event 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: January 7, 2022 1 session		

Total Hearing Session Fees	= \$	1,150.00
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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

David A. Schuler

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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

David A. Schuler

David A. Schuler
Sole Public Arbitrator

01/13/2022

Signature Date

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January 13, 2022

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