

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

██████████

Case Number ██████████

vs.

Respondent

Raymond, James & Associates, Inc.

Hearing Site: Tampa, Florida

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado and Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent Raymond, James & Associates, Inc. (“Respondent”): Stanton A. Fears, Esq., Raymond James Financial, Inc., St. Petersburg, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 19, 2018.
Claimant signed the Submission Agreement: February 19, 2018.

Statement of Answer filed by Respondent on or about: April 11, 2018.
Respondent signed the Submission Agreement: March 6, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer complaints, Occurrence Numbers ██████████, ██████████, ██████████, ██████████, and ██████████, from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent did not oppose the request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers ██████████, ██████████, ██████████, ██████████, and ██████████ from his CRD, \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not request relief.

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

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

On or about October 2, 2018, Claimant filed a copy of the Death Record for the customer related to Occurrence Number [REDACTED], and a copy of the letters sent to the customers for Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED], providing each customer with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. On or about October 15, 2018, Claimant filed an Affidavit of Service for the letters sent to the customers for [REDACTED], [REDACTED], [REDACTED], and [REDACTED] and advised that Claimant was unable to serve the Statement of Claim on the deceased customer related to Occurrence Number [REDACTED].

On or about October 29, 2018, Claimant's counsel filed an Affidavit stating that the settlement agreements related to Occurrence Numbers [REDACTED] and [REDACTED] (the "Settled Occurrences") had been requested from Respondent, but Respondent was unable to locate them and Claimant did not have a copy of the settlement agreements.

The Arbitrator conducted a recorded, telephonic hearing on October 30, 2018, 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 for Occurrence Numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED] did not participate in the expungement hearing. The Arbitrator took judicial notice that the customer for Occurrence Number [REDACTED] is deceased and could not participate in the hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and noted that there were no settlements for Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED].

The Arbitrator noted that the settlement documents for the Settled Occurrences were not provided for his review because the documents could not be located by the parties. The Arbitrator determined, however, that even in the absence of the settlement agreements, expungement is appropriate given the evidence and testimony presented. Based upon Claimant's testimony, the Arbitrator considered the amount of payments made to any party and noted that Claimant contributed to the settlement amounts for the Settled Occurrences from his E&O insurance per his employer. The Arbitrator also noted that the settlements were not conditioned on the customers not opposing the request for expungement.

The Arbitrator found that Claimant did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim, Claimant's Exhibits, and Claimant's testimony.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, 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 [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous.

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

Claimant did not recommend the investment that was the subject of the investor's complaint. Claimant was a new broker working for his father-in-law at the time. His father-in-law suggested the investment. Claimant also changed employment shortly after the investment was made. As such, Claimant could not have been responsible for the losses the investor complained about. Thus, the investor's claims were factually impossible.

2. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous.

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

Claimant made no guarantees regarding the portfolio choices and potential returns. The investor agreed with Claimant's recommendations and the Claimant and investor designed a balanced diversified portfolio. The investor claimed underperformance based upon later comparing his portfolio to an ideal tech sector portfolio at the time. The investor's assertions were clearly erroneous as they were based on comparisons of different types of stock portfolios and indexes.

3. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous.

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

Claimant did not solicit the investments that the investor complained about. The investor initially agreed with Claimant's recommendations in setting up the investor's initial fund. The investor later purchased investments contrary to Claimant's recommendation. The investor's claim that Claimant caused him to overinvest in speculative stock is therefore factually incorrect.

4. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous.

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

Claimant and the investor agreed on the initial purchases to establish the investor's portfolio. All trades related to that portfolio were undertaken pursuant to express instructions from the investor. After some low returns due to the market's response to international events, the investor requested liquidation of the portfolio, despite being reminded that the investments were meant for long term. After liquidating the fund due to poor results, the investor later filed a complaint asserting Claimant's failure to follow instructions, which is clearly erroneous and factually incorrect.

5. The Arbitrator recommends the expungement of all references to Occurrence Number [REDACTED] from the registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous.

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

Claimant established a portfolio, after discussions with the investor, which Claimant maintained for more than a decade. Claimant recommended certain stocks and executed trades only in response to express agreement and instruction from the investor. The investor's complaints concerned his fund losing value after the Great Recession. The investor's complaints of poor recommendations and poor advice are clearly erroneous as Claimant did not make any guarantees regarding the investor's potential return and the losses were market driven, not the result of Claimant's direct actions.

6. 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 Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 50.00

**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 = \$ 150.00

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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session = \$ 50.00
Pre-hearing conference: July 18, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: October 30, 2018 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

