

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

AXA Advisors, LLC

Hearing Site: Denver, Colorado

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Doctor Kennedy, MBA, J.D., and Owen Harnett, J.D., Advisor Law LLC, Broomfield, Colorado.

For Respondent AXA Advisors, LLC (“Respondent”): Hector D. Geribon, Esq., AXA Advisors, LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 21, 2016.
Amended Statement of Claim filed on or about: January 11, 2017.
Third Amended Statement of Claim filed on or about: May 5, 2017.
Claimant signed the Submission Agreement: October 28, 2016

Statement of Answer filed on or about: December 20, 2017.
Answer to Amended Statement of Claim filed on or about: January 27, 2017.
Answer to Third Amended Statement of Claim filed on or about: May 24, 2017.
Respondent signed the Submission Agreement: December 9, 2016.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of three occurrences from his Central Registration Depository (“CRD”) record: two customer complaints, occurrence numbers ██████████ and ██████████ (“Underlying Complaints”); and one Form U5 Termination Disclosure, occurrence number ██████████.

In the Amended Statement of Claim, Claimant requested expungement of another Form U5 amendment, occurrence number ██████████; and added a cause of action for tortious interference with prospective economic advantage and facts and exhibits.

Unless specifically admitted in the Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

In the Third Amended Statement of Claim, Claimant removed the cause of action for tortious interference with prospective economic advantage and added facts.

In its Answer to the Third Amended Statement of Claim, Respondent advised that it takes no position as to Claimant's expungement requests, however Respondent denied that it was liable for any amount of Claimant's request for \$1.00 in damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of occurrence numbers [REDACTED] and [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;
2. Expungement of occurrence number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(B) as Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds;
3. Expungement of occurrence numbers [REDACTED] and [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
4. Based on its defamatory nature, the termination type on Claimant's CRD record should be changed to "Voluntary" and the termination comment be expunged in its entirety;
5. Expungement of the "Yes" answer to Questions 7B and 7F(1-2) of Claimant's Form U5 maintained by the CRD and the answer be changed to "No" and the accompanying Internal Review and Termination Disclosure Reporting Pages be deleted in their entirety;
6. If the Arbitrator is unwilling to exercise his discretion in resolving this intra-industry dispute by changing the reason for termination to "Voluntary," Claimant requested the wording of the Disclosure Reporting Page accompanying the Form U5 and the allegations portion of his BrokerCheck profile for this disclosure to read: "The Broker was wrongfully terminated following allegations which were later proven false. The Broker was proven innocent of any wrongdoing necessitating discharge. Non-fiduciary, no investment-related violations, and no customer harm."
7. Damages in the amount of \$1.00 from Respondent for its part in contributing to Claimant's injury; and
8. Any and all further relief the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Claimant take nothing against Respondent and the Arbitrator deny Claimant's request for one-dollar (\$1.00) in compensatory damages;
2. Claimant's request for an order expunging the language on his Form U5 and that it be replaced with other language be dismissed and denied in its entirety;

3. Claimant's claim relating to defamation be dismissed and denied in its entirety;
4. To the extent Respondent is required to participate in the proceedings, Respondent be awarded the costs of this proceeding, including all reasonable attorneys' fees; and
5. An order that all costs of this proceeding, including forum fees, be assessed solely against Claimant.

In the Amended Statement of Claim, Claimant requested:

1. Expungement of the Form U5, occurrence number [REDACTED], and subsequent Form U5 amendments, and those relevant portions of the Form U4, from Claimant's CRD record on the basis that the statement is defamatory in nature, to include an amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary", subsequent expungement of the Reason for Termination on Claimant's BrokerCheck report, expungement of the "Yes" answers to Questions 7B, 7E(2), 7F(1), and 7F(2) of Claimant's Form U5, amending those "Yes" responses to "No", and a deletion of the accompanying Internal Review and Termination Disclosure Reporting Pages in their entirety;
2. Expungement of the Form U4 information regarding the Underlying Complaints, occurrence numbers [REDACTED] and [REDACTED], from Claimant's CRD and BrokerCheck, on the basis that the statements are false, factually impossible, and clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C), and that Claimant was not involved in the alleged dispute with respect to occurrence number [REDACTED], pursuant to FINRA Rule 2080(b)(1)(B);
3. Expungement of the Form U5 amendment and Form U4 information regarding the "signature irregularities" Internal Review matter, occurrence number [REDACTED], from Claimant's CRD and BrokerCheck, on the basis that the statement is defamatory in nature, to include an amendment of the "Yes" answer to Question 7B of the Form U-5 to "No", full expungement of the Form U-5 amendment related to this matter in Section 7, and deletion of any accompanying Internal Review Disclosure pages in their entirety;
4. If the Arbitrator is unwilling to exercise his discretion in resolving this intra-industry dispute by fully expunging occurrence numbers [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Claimant requests the wording of the disclosure reporting pages accompanying the Form U4, Form U5, and the allegations portion of his BrokerCheck profile be changed to read as follows:
 - a. For occurrence number [REDACTED]: "The Broker was wrongfully terminated following allegations which were later proven false. The Broker was proven innocent of any wrongdoing necessitating discharge. Non-fiduciary; no investment-related violations, and no customer harm."
 - b. For occurrence number [REDACTED]: "The Broker was wrongfully accused by a customer of allegations which were later proven false. The Broker was proven innocent of any wrongdoing. Non-fiduciary; no investment-related violations, and no customer harm."
 - c. For occurrence number [REDACTED]: "The Broker was mis-named in a customer complaint, and was later exonerated of any involvement in the underlying allegations. Non-fiduciary; no investment-related violations, and no customer harm."
 - d. For occurrence number [REDACTED]: "The Broker was mis-named in an internal review, and was later exonerated of any involvement in the

underlying allegations. Non-fiduciary; no investment-related violations, and no customer harm.”

5. An award of damages in the amount of \$1.00 from Respondent for their part in contributing to Claimant’s injury; and
6. Any and all further relief the Arbitrator deems just and equitable.

In the Answer to the Amended Statement of Claim, Respondent requested:

1. Claimant take nothing against Respondent, and Claimant’s Amended Statement of Claim be stricken in its entirety;
2. Claimant take nothing against Respondent, and Claimant’s Amended Statement of Claim be dismissed in its entirety, and the Arbitrator deny Claimant’s request for relief, including denying Claimant’s request for one-dollar (\$1.00) in damages;
3. Respondent be awarded the costs of this proceeding, including all reasonable attorneys’ fees;
4. An order that all costs of this proceeding, including forum fees, be assessed solely against Claimant; and
5. Such other and further relief in favor of Respondent as the Arbitrator deems appropriate.

In the Third Amended Statement of Claim, Claimant requested:

1. Expungement of the Form U5, occurrence number [REDACTED], and subsequent Form U5 amendments, and those relevant portions of the Form U4, from Claimant’s CRD record on the basis that the statement is defamatory in nature, misleading, inaccurate, or erroneous, to include an amendment of the Reason for Termination entry in Section 3 of Claimant’s Form U5 to read “Voluntary”, subsequent expungement of the Reason for Termination on Claimant’s BrokerCheck report, expungement of the “Yes” answers to Questions 7B, 7E(2), 7F(1), and 7F(2) of Claimant’s Form U5, amending those “Yes” responses to “No”, and a deletion of the accompanying Internal Review and Termination Disclosure Reporting Pages in their entirety;
2. Expungement of the Form U4 information regarding the Underlying Complaints, occurrence numbers [REDACTED] and [REDACTED] from Claimant’s CRD and BrokerCheck, on the basis that the statements are false, factually impossible, and clearly erroneous pursuant to FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C), and that Claimant was not involved in the alleged dispute with respect to occurrence number [REDACTED] pursuant to FINRA Rule 2080(b)(1)(B);
3. Expungement of the Form U5 amendment and Form U4 information regarding the “signature irregularities” Internal Review matter, occurrence number [REDACTED], from Claimant’s CRD and BrokerCheck, on the basis that the statement is defamatory in nature, misleading, inaccurate, or erroneous, to include an amendment of the “Yes” answer to Question 7B of the Form U-5 to “No”, full expungement of the Form U-5 amendment related to this matter in Section 7, and deletion of any accompanying Internal Review Disclosure pages in their entirety; and
4. An award of damages in the amount of \$1.00 from Respondent for their part in contributing to Claimant’s injury.

In the Answer to the Third Amended Statement of Claim, Respondent requested:

1. Claimant take nothing against Respondent, and the Arbitrator deny Claimant's request for one-dollar (\$1.00) in compensatory damages;
2. To the extent Respondent is required to participate in the proceedings, Respondent be award the costs of this proceeding; and
3. An order that all the costs of this proceeding, including forum fees, be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 11, 2017, Claimant filed an Amended Statement of Claim before the Arbitrator's appointment to the case. Therefore, in accordance with Rule 13309(a) of the Code of Arbitration Procedure ("Code"), Claimant's Amended Statement of Claim became part of the record.

On April 20, 2017, Claimant filed a Motion to Amend the Amended Statement of Claim. On May 3, 2017, Respondent advised that it did not object to Claimant's Motion to Amend. On May 5, 2017, the Arbitrator granted Claimant's Motion to Amend.

On October 10, 2017, Claimant provided notice that the Third Amended Statement of Claim and notice of the expungement hearing had been served on the customers in occurrence number [REDACTED] (Mr. and Mrs. R) and the customer in occurrence number [REDACTED] (Ms. E), hereinafter collectively referred to as "Underlying Customers."

On October 13, 2017, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Statement of Claim had been served on the Underlying Customers.

The Arbitrator conducted a recorded telephonic on January 23, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not contest the request for expungement. The Underlying Customers did not appear at the expungement hearing.

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

The Arbitrator reviewed the BrokerCheck® Report for Claimant. Through Claimant's testimony, the Arbitrator confirmed that in occurrence number [REDACTED], the parties settled as Mr. and Mrs. R were refunded and allowed to terminate their annuities without the imposition of surrender charges. The Arbitrator found that there was no written settlement document. Also through Claimant's testimony, the Arbitrator noted that Claimant did not contribute to this settlement amount as there were no actual payments made, and considered the other terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Mr. and Mrs. R not opposing the request for expungement.

The Arbitrator found that there was no settlement in occurrence number [REDACTED].

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

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: all the exhibits entered into evidence and Claimant's testimony.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and 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 numbers [REDACTED] and [REDACTED] from 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.

Occurrence Number [REDACTED] (in which Mr. and Mrs. R were the customers):

Pursuant to Rule 13805 of the 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 Arbitrator has made the above Rule 2080 findings based on the following reasons: Mr. and Mrs. R's complaint was not valid, but rather false. The Arbitrator found that the investment was appropriate.

Occurrence Number [REDACTED] (in which Ms. E was the customer):

Pursuant to Rule 13805 of the 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; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons: Ms. E's claim is factually impossible as to Claimant because he was not involved, it is also false because he was not involved. The Arbitrator found that

Ms. E was not the customer of Claimant and that Ms. E never had contact with Claimant.

2. The Arbitrator recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Claimant [REDACTED] (CRD# [REDACTED]) Form U5 filed by AXA Advisors, LLC on June 20, 2008 and maintained by the CRD. The Reason for Termination shall be changed to "Voluntary," and the Termination Explanation should appear blank.

In addition, the Arbitrator recommends the expungement of the "Yes" answers to Questions 7F(1) and 7F(2) on the foregoing Form U5. The Arbitrator recommends that the answers be changed to "No" and the accompanying Termination Disclosure Reporting Page be deleted in its entirety. These recommendations shall apply to all subsequent disclosures concerning these events, including but not limited to, the Form U4 filed by J.P. TURNER & COMPANY, L.L.C. (43177) on July 20, 2009.

In addition, the Arbitrator recommends the expungement of the "Yes" answer to Question 7B on the U5-AMENDMENT filed by AXA ADVISORS, LLC (6627) on August 12, 2009. The arbitrator recommends that the answer be changed to "No" and the accompanying Internal Review Disclosure Reporting Page be deleted in its entirety.

The Arbitrator is making these recommendations based on the defamatory nature of the information.

The registration records are not automatically amended to include the changes indicated above. Claimant [REDACTED] must forward a copy of this Award to FINRA's Registration and Disclosure Department for review.

3. Any and all relief not specifically addressed herein is 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
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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/ as Respondent's former firm, 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: March 9, 2017 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$50.00
Hearing Date: January 23, 2018 1 session

Total Hearing Session Fees = \$100.00

The Panel 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.

ARBITRATOR

William F. Skewes

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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



William F. Skewes
Sole Public Arbitrator



Signature Date

April 18, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)