Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Johnny Scott

vs.

Respondent
Hennion & Walsh, Inc.

Case Number: 18-00884
Hearing Site: Jacksonville, Florida

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant Johnny Scott (“Claimant”): Lars K. Soreide, Esq., Soreide Law Group, Pompano Beach, Florida.*


*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: March 5, 2018.
Claimant signed the Submission Agreement: March 5, 2018.

Statement of Answer filed on or about: May 24, 2018.
Respondent signed the Submission Agreement: May 14, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence, breach of fiduciary duty, negligent supervision, and breach of contract. The causes of action relate to Claimant’s allegation that Respondent advised Claimant to sell his Genworth Financial bond and to purchase a Puerto Rico Public Buildings Revenue and a Puerto Rico Transit bond, both of which were uninsured. Claimant further alleges that Respondent represented that the bonds were stable and safe and advised Claimant to continue to hold the bonds as their value plummeted, causing Claimant to incur losses.
Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested an award against Respondent for approximately $100,000.00 in compensatory damages, interest, costs, and any further relief the Arbitrator deems just and proper.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant’s Statement of Claim in its entirety with prejudice, expunge this arbitration from the registration records maintained by the Central Registration Depository (“CRD”) for Unnamed Party Patrick Timothy Walsh (“Walsh”), and grant such other relief that the Arbitrator deems fair and equitable.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about September 18, 2019, Claimant filed a Notice of Settlement, withdrawing his claims against Respondent with prejudice and requesting that the matter remain open so that the Arbitrator could consider an expungement request.

On or about September 26, 2019, Respondent filed an Unopposed Request for an Order of Expungement on behalf of Unnamed Party Walsh, which included emails from Claimant’s counsel stating that Claimant did not oppose expungement and that Walsh not involved in the recommendation to purchase the bonds.

The Arbitrator conducted a recorded, telephonic hearing on December 2, 2019 so the parties could present oral argument and evidence on the request for expungement on behalf of Walsh.

Neither Claimant nor Claimant’s counsel participated in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Walsh and the settlement document, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Claimant not opposing the request for expungement. The Arbitrator also noted that Walsh did not contribute to the settlement amount.

The Arbitrator noted that Walsh 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: testimony of Walsh, all pleadings filed as well as exhibits thereto (including Statement of Claim, Statement of Answer, Claimant’s Pre-Hearing Brief, and
Walsh’s Unopposed Request for an Order of Expungement), the Walsh Expungement Chart, and Walsh’s affidavit with broker notes.

AWARD

After considering the pleadings and 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:

The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1947694) from registration records maintained by the CRD, for Unnamed Party Patrick Timothy Walsh (CRD Number 2383640), with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Patrick Timothy Walsh 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 12805 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; and
- The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Claimant’s complaint arose from investments made in 2013 by Claimant in Puerto Rico bonds, which were investment grade at the time and rated between Aaa and Baa3 by Moody's and AAA to BBB- by Standard & Poor's. Some of the funds used to purchase the bonds were from the sale of a Genworth Financial bond held by Claimant, which was poorly rated and not investment grade level. Claimant’s investment objectives were growth and income with moderate risk. The bonds, at the time of purchase, provided income which was received over time until the Puerto Rico bond problem became severe with publicized losses to investors.

Although Walsh was part of a team, he was not involved in the 2013 purchase of the bonds. That is established by his testimony and by the Client Relationship Management Account History broker notes filed with Walsh’s Affidavit. Other financial advisors purchased the investments at issue for Claimant. The suitability determination made at the point of sale
was made by those individuals and Walsh was not involved. Therefore, the claim is clearly erroneous and he had no sales-practice to violate.

The undersigned Arbitrator found it highly persuasive that Claimant’s attorney, on behalf of his client, did not oppose the expungement and far more importantly stated in Exhibit A to the Unopposed Request for an Order of Expungement: "... based on the evidence presented to me in discovery that Patrick Walsh was not involved in the recommendation to purchase [the] Puerto Rico bonds that were the subject of the claim." That representation by counsel for Claimant is alone sufficient basis to expunge the unsuitability allegation from the CRD for Walsh. It is not possible in my mind for Walsh to not make the recommendation yet to be liable for it being allegedly unsuitable.

Of further interest, according to Walsh's testimony, Claimant purchased and sold several additional Puerto Rico bonds after he went to another firm, when the crisis in the bond funds was still developing but was known. This is not indicative of a customer who was not willing to be in such investments or did not understand them.

The Arbitrator finds it serves no public or regulatory interest to keep this claim on the record of this broker. This expungement will have no adverse effect on the investing public, regulators, or both, and, in fact, does unwarranted harm to the financial advisor.

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 = $ 975.00

*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 = $ 1,100.00
- Member Process Fee = $ 2,250.00

**Discovery-Related Motion Fee**

Fees apply for each decision rendered on a discovery-related motion.

- Three (3) decisions on discovery-related motions on the papers @ $200.00/decision = $ 600.00
Respondent submitted two (2) discovery-related motions

| Total Discovery-Related Motion Fees | =$ 600.00 |

The Arbitrator has assessed $600.00 of the discovery-related motion fees to Respondent.

**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, that lasts four (4) hours or less. Fees associated with these proceedings are:

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<tr>
<th>Session Type</th>
<th>Date</th>
<th>Fee</th>
<th>Notes</th>
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<tbody>
<tr>
<td>One (1) pre-hearing session</td>
<td>July 24, 2018</td>
<td>$450.00/session</td>
<td>1 session</td>
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<tr>
<td>One (1) hearing session on expungement request</td>
<td>December 2, 2019</td>
<td>$450.00/session</td>
<td>1 session</td>
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| Total Hearing Session Fees | =$ 900.00 |

The Arbitrator has assessed $225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed $675.00 of the hearing session fees to Respondent.

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

John P. Cullem

Sole Public Arbitrator

12/17/2019
Signature Date

December 17, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)