

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Richard Michael Wesselt

Case Number: 18-01977

vs.

Respondent
SA Stone Wealth Management Inc.

Hearing Site: Philadelphia, Pennsylvania

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Richard Michael Wesselt: Doctor Kennedy MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent SA Stone Wealth Management Inc.: Craig Hymowitz, Esq., SA Stone Wealth Management Inc., Birmingham, Alabama.

CASE INFORMATION

Amended Statement of Claim filed on or about: May 23, 2018.

Claimant's Answer to Respondent's Answer to Amended Statement of Claim and Counterclaim: September 24, 2018.

Richard Michael Wesselt signed the Submission Agreement: May 23, 2018.

Answer to Amended Statement of Claim and Counterclaim filed by Respondent on or about: September 4, 2018.

First Amended Counterclaim filed on or about: January 22, 2019.

Answer to Amended Statement of Claim and Second Amended Counterclaim filed on or about: May 21, 2019.

SA Stone Wealth Management Inc. signed the Submission Agreement: September 4, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

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

In its Counterclaims, Respondent asserted the following cause of action: breach of contract.

Unless specifically admitted in the Answer to Counterclaim, Claimant denied the allegations made in the Statement of Answer and Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested expungement of Occurrence Numbers 1676886, 1598013, 1384050, 1384049 and 1425534 from their registration records maintained by the Central Registration Depository ("CRD") in accordance with FINRA Rules 2080(b)(1)(A), 2080(b)(1)(B) and Rule 2080(b)(2)(C); \$1.00 in compensatory damages and any and all other relief the Arbitrator deems just and equitable.

In the Answer to Amended Statement of Claim, Respondent did not oppose the request for expungement, but objected to Claimant's request for an award of nominal damages of \$1.00.

In the Counterclaim, Respondent requested compensatory damages in an amount no less than \$10,000.00 plus interest; declaratory judgment; costs; and such other and further relief as the Arbitration Panel may deem to be just and equitable.

In the Answer to Respondent's Answer to Amended Statement of Claim and Counterclaim, Claimant requested that the Panel deny Respondent's request for damages and declaratory judgment and grant request for any and all other relief that the Panel deems just and equitable.

In the First Amended Counterclaim, Respondent requested compensatory damages in an amount no less than \$10,000.00 for each underlying arbitration or an amount no less than \$30,000.00 plus interest; costs; fees; expenses; and such other and further relief the Panel deems just and equitable.

In the Second Amended Counterclaim, Respondent requested compensatory damages in an amount no less than \$10,000.00 for each underlying arbitration or an amount no less than \$50,000.00 plus interest for the underlying arbitrations; declaratory judgment; costs; fees; expenses; and such other and further relief the Panel deems just and equitable.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

The Claimant amended the Statement of Claim prior to service on Respondent. The Amended Statement of Claim is deemed the only claim filed.

On January 22, 2019, Respondent filed a Motion to File an Amend Counterclaim. Claimant did not respond to the Motion. By Order dated May 23, 2019, the Arbitrator granted Respondent's Motion to File an Amended Counterclaim.

On or about February 27, 2019, Claimant filed a Motion to Dismiss Respondent's Counterclaims. On or about March 8, 2019, Respondent filed an Opposition to Claimant's Motion to Dismiss. On or about March 13, 2019, Claimant filed a Reply in further support of his Motion to Dismiss. During the June 10, 2019 evidentiary hearing, the Arbitrator heard oral arguments on Claimant's Motion to Dismiss. After due deliberation, the Arbitrator denied Claimant's Motion to Dismiss Respondent's Counterclaims.

On or about May 21, 2019, Respondent filed a Motion to File a Statement of Answer and Second Amended Counterclaim. On or about May 22, 2019, Claimant filed an Opposition to Respondent's Motion to File a Statement of Answer and Second Counterclaim. On or about May 28, 2019, Respondent filed a Reply in support of their Motion to File a Statement of Answer and Second Counterclaim. On or about May 24, 2019, after due deliberation, the Arbitrator granted Respondent's Motion to File a Statement of Answer and Second Amended Counterclaim.

On May 8, 2019, Claimant provided FINRA Office of Dispute Resolution with proof that he notified the customers related to Occurrence Numbers 1425534, 1384049, 1384050, 1598013 and 1676886 of the expungement request and of their right to participate and testify at the expungement hearing and included a copy of the Statement of Claim with the notice.

The previous Arbitrator conducted a recorded in-person hearing on June 10, 2019 so the parties could present oral argument and evidence on Richard Michael Wesselt's request for expungement.

The customers in the underlying complaints related to Occurrence Numbers 1425534, 1384049, 1384050, 1598013 and 1676886 did not participate in the expungement hearing nor did they not contest the request for expungement.

On July 31, 2019, the parties were notified of the Arbitrator's withdrawal from this case. On August 7, 2019, the parties requested that the Director of Arbitration affirm the decision entered by the previous Arbitrator and enter it as a final order. By letter dated September 5, 2019, the Director denied the parties' request, notified them of the replacement Arbitrator, and notified them that the replacement Arbitrator would listen to the recordings and consider any additional submissions filed by the parties. The pleadings, Claimant's post-hearing submission, along with the recording/transcript of the June 10, 2019 hearing, was submitted to and reviewed by the Arbitrator. On October 23, 2019, the Arbitrator issued an Order requesting that a telephonic conference call be scheduled with the parties. The Arbitrator conducted a recorded telephonic hearing on October 28, 2019, so the parties could present additional testimony on Richard Michael Wesselt's request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Richard Michael Wesselt and Settlement Agreements related to Occurrence Numbers 1425534 and 1598013. The Arbitrator considered the amount of payments made to the customers. The Arbitrator noted that the settlements were not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that Claimant contributed to the settlement amounts but the amount of the settlements was nominal to avoid additional legal expenses.

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: Claimant's Post-Hearing Brief; the BrokerCheck Report for Richard Michael Wesselt; new pleadings dated August 21, 2019; the Settlement Agreements and General Release.

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. Claimant is liable for and shall pay to Respondent \$50,000.00 in compensatory damages.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1384049 and 1384050 from registration records maintained by the CRD, for Claimant Richard Michael Wesselt (CRD# 2195569), with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Michael Wesselt 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 false.

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

The complaints related to Occurrence Numbers 1384049 and 1384050 were investigated and denied by the broker dealer because the firm established that the Claimant made suitable recommendations and did not misrepresent any information regarding the mutual funds. The files were closed after a FINRA determination and there was no further contact from the complainants.

3. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1425534 and 1598013 from registration records maintained by the CRD, for Claimant Richard Michael Wesselt (CRD# 2195569), with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Michael Wesselt 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 false.

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

The complaints related to Occurrence Numbers 1425534 and 1598013 were settled for a nominal amounts to avoid additional legal expenses. There was no indication that the Claimant's advice was unsuitable or a misrepresentation.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1676886 from registration records maintained by the CRD, for Claimant Richard Michael Wesselt (CRD# 2195569), with the understanding that, pursuant to Notice to Members 04-16, Claimant Richard Michael Wesselt 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 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 finding based on the following reasons:

The Claimant testified that he did not provide any representation regarding the disputed investment. He did not recommend it and never received any compensation for the purchase. In fact, he strongly advised against the investment.

5. Any and all claims for relief not specifically addressed herein, including punitive damages, and attorneys' fees, if any, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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
Counterclaim Filing Fee	= \$1,450.00

**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 SA Stone Wealth Management Inc. is assessed the following:

Member Surcharge	= \$ 150.00
Member Process Fee	= \$ 1,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

March 14-15, 2019, postponement by Claimant. =WAIVED

Total Postponements Fees =WAIVED

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

March 14-15, 2019, postponement requested by Claimant =WAIVED

Total Last Minute Cancellation Fees =WAIVED

Discovery-Related Motion Fee

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

One (1) decision on discovery-related motion on the papers
with one (1) arbitrator @ \$200.00/decision = \$200.00

Claimant submitted one discovery-related motion

Total Discovery-Related Motion Fees = \$200.00

The Panel has assessed \$200.00 of the discovery-related motion fees to Claimant.

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:

Two (2) pre-hearing sessions with a single arbitrator @ \$250.00/session = \$ 500.00
Pre-hearing conferences: December 4, 2018 1 session
February 20, 2019 1 session

Two (2) hearing sessions @ \$450.00/session = \$ 900.00
Hearing Date: June 10, 2019 2 sessions

One (1) hearing session on expungement request @ \$450.00/session WAIVED
Hearing Date: October 28, 2019 1 session

Total Hearing Session Fees = \$1,400.00

The Arbitrator has assessed the \$1,400.00 hearing session fees to Claimant.

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

ARBITRATOR

Louis P. Wagman

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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

Louis P. Wagman

Louis P. Wagman
Sole Public Arbitrator

10/31/2019

Signature Date

November 01, 2019

Date of Service (For FINRA Office of Dispute Resolution office use only)