In the Matter of the Arbitration Between:

Claimant  
Joey Singleton IRA  

vs.  

Respondent  
Merrill Lynch Pierce Fenner & Smith Inc.  

Nature of the Dispute: Customer vs. Member  

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**


For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Jennifer N. Lamirand, Esq. and Tara A. LaClair, Esq., Crowe & Dunlevy, Oklahoma City, Oklahoma.

*FINRA recorded the appearance of Claimant’s representative at the time of filing of the Statement of Claim. The 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 representative appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 2018.  
Claimant signed the Submission Agreement: May 31, 2018.

Statement of Answer filed by Respondent on or about: September 12, 2018.  
Respondent signed the Submission Agreement: June 27, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: unsuitability, fraud, negligent misrepresentation, breach of fiduciary duty, breach of covenants of good faith and fair dealing, negligent supervision, failure to supervise, and respondeat superior. The causes of action relate to Claimant’s allegations that Respondent’s representatives pressured Claimant to invest in speculative, unsuitable, proprietary variable annuities and misrepresented the related risks, resulting in Claimant being charged large commission fees.
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 compensatory damages in the amount of $200,000.00 or an amount to be established at the hearing, reimbursement of all filing and hearing fees, as well as costs relating to expert witness fees, transcripts, and analysis.

In the Statement of Answer, Respondent requested that the Panel dismiss the Statement of Claim in its entirety and award its attorneys’ fees and costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about July 19, 2019, Claimant filed a notice of settlement of its claims against Respondent and requested that the matter remain open for Respondent to request expungement of the above-captioned arbitration from registration records maintained by the Central Registration Depository (“CRD”) for Unnamed Party Stephen Wilen Roberts (“Roberts”). Therefore, the Panel made no determination on Claimant’s claims against Respondent.

On or about October 11, 2019, Respondent filed a Motion for Expungement on behalf of Roberts. Claimant did not file a response.

The Panel conducted a recorded, telephonic hearing on December 9, 2019, so the parties could present oral argument and evidence on Roberts’ request for expungement.

Neither Claimant nor Claimant’s representative participated in the expungement hearing or contested the request for expungement.

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

The Panel noted that Roberts did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Respondent’s Exhibits A, E, F, G, H, I, J, K, L, O, and R and Roberts’ testimony.
The party present at the hearing has agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

**AWARD**

After considering the pleadings and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1986295) from registration records maintained by the CRD for Unnamed Party Stephen Wilen Roberts (CRD Number 4443720) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Stephen Wilen Roberts 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 Panel has made the following Rule 2080 affirmative finding of fact:

- The claim, allegation, or information is false.

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

Claimant’s claim against Roberts was completely unsupported by the evidence. The evidence showed that Roberts did not pressure Claimant, the variable annuities were not Merrill Lynch proprietary products, full disclosure was made by Roberts concerning the variable annuities, Claimant actually made money with the annuities, and the underlying investments were suitable.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**
FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

<table>
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<tr>
<th>Description</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Initial Claim Filing Fee</td>
<td>$1,425.00</td>
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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, Respondent is assessed the following:
Member Surcharge = $1,700.00
Member Process Fee = $3,250.00

**Discovery-Related Motion Fee**
Fees apply for each decision rendered on a discovery-related motion.

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

Claimant submitted one (1) discovery-related motion

**Total Discovery-Related Motion Fees = $200.00**

The Panel has assessed $100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed $100.00 of the discovery-related motion fees to Respondent.

**Hearing Session Fees and Assessments**
The Panel 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:

Two (2) pre-hearing sessions with a single arbitrator @ $450.00/session = $900.00
Pre-hearing Conferences: May 29, 2019 1 session
Pre-hearing Conferences: May 31, 2019 1 session

One (1) pre-hearing session with the Panel @ $1,125.00/session = $1,125.00
Pre-hearing conference: October 12, 2018 1 session

One (1) hearing session on expungement request @ $1,125.00/session = $1,125.00
Hearing Date: December 9, 2019 1 session

**Total Hearing Session Fees = $3,150.00**

The Panel has assessed $1,012.50 of the hearing session fees to Claimant.

The Panel has assessed $2,137.50 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.

Concurring Arbitrators' Signatures

**Raymond C. Kerr**
Raymond C. Kerr
Public Arbitrator, Presiding Chairperson
12/17/2019

**Malcolm Edwin Whittaker**
Malcolm Edwin Whittaker
Public Arbitrator
12/18/2019

**Kevin Colby**
Kevin Colby
Public Arbitrator
12/17/2019

December 18, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)