Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Walter Bogart

vs.

Respondent
Charles Schwab & Co., Inc.

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES


*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. The 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: November 5, 2018.
Claimant signed the Submission Agreement: November 5, 2018.

Statement of Answer filed by Respondent on or about: January 25, 2019.
Respondent signed the Submission Agreement: January 25, 2019.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; violation of South Carolina securities law; violations of FINRA suitability rules; breach of fiduciary duty; failure to supervise and control person liability; respondeat superior; and professional negligence. The causes of action relate to Claimant’s investment in unspecified exchange traded funds, emerging markets, and foreign funds and markets.
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:
1. Damages including, but not limited to, an amount of approximately $100,000.00 representing the loss of his investment value and the lost opportunity in his investment accounts;
2. Commission fees be reimbursed;
3. Interest at the legal rate on all sums recovered;
4. Costs of this proceeding;
5. Reasonable attorneys’ fees;
6. Punitive damages; and
7. Such other relief as the Arbitrator deems just and proper.

In the Statement of Answer, Respondent requested:
1. Dismissal of Claimant’s Statement of Claim in its entirety;
2. Assessment of all forum fees and costs against Claimant; and
3. Such further relief as the Arbitrator deems just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

On August 20, 2019, Claimant advised that the parties reached a settlement and that Respondent intended to move forward with an expungement hearing, and requested that the matter remain open for that purpose.

On August 28, 2019, Respondent filed a motion for expungement of this claim from the Central Registration Depository (“CRD”) records of unnamed party Jenny Lynn Carney (“Carney”). Claimant did not submit a response.

The Arbitrator conducted a recorded telephonic hearing on December 3, 2019 so the parties could present oral argument and evidence on Carney’s request for expungement.

Claimant did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed Carney’s BrokerCheck® Report, and noted that she has been a registered representative for Respondent for almost 20 years and has only this disclosure in her report.

The Arbitrator also reviewed the Settlement Agreement and General Release entered into by the parties (“Settlement Agreement”), 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 Carney did not participate in
the settlement in any way, including negotiating the settlement or contributing to the settlement amount of $17,000.00, which is approximately 17% of Claimant’s claim.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Settlement Agreement; exhibits to the motion for expungement; and testimony of Carney during the expungement hearing.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 2008662, from registration records maintained by the CRD, for unnamed party Jenny Lynn Carney (CRD# 3247221), with the understanding that, pursuant to Notice to Members 04-16, unnamed party Jenny Lynn Carney 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.

The claim, allegation, or information is false.

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

Based on the exhibits presented during the expungement hearing and Carney’s testimony, the Arbitrator finds that Claimant was frustrated by short term “not realized” losses with a long term objective. The Arbitrator believes that Respondent and Carney did, to the best of their ability, provide experience and appropriate advice for Claimant’s long term financial objectives.

The Arbitrator also finds that the investment was suitable for Claimant. In addition, Claimant’s account was nondiscretionary, and Claimant is still Respondent’s client.

Therefore, the Arbitrator sees no reason not to expunge Carney’s CRD records as he finds that there was no wrongdoing by Carney.
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(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 = $ 1,100.00
Member Process Fee = $ 2,250.00

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 @ $450.00/session = $ 450.00
Pre-hearing conference: February 11, 2019 1 session

One (1) hearing session on expungement request @ $450.00/session = $ 450.00
Hearing Date: December 3, 2019 1 session

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

Thomas Joseph Atkinson, Sr. 12/17/2019
Sole Public Arbitrator

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