In the Matter of the Arbitration Between:

Claimant
Edward Michael Cahill

vs.

Respondents
American Capital Partners, LLC
First Asset Management, Inc.
Milestone Financial Services, Inc.

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES


Respondent First Asset Management, Inc. did not enter an appearance in this matter.

Respondent Milestone Financial Services, Inc. did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed on or about: December 5, 2018.
Amended Statement of Claim filed on or about: June 14, 2019.
Edward Michael Cahill signed the Submission Agreement: December 5, 2018.

American Capital Partners, LLC did not submit a Statement of Answer or a Submission Agreement.

First Asset Management, Inc. did not submit a Statement of Answer or a Submission Agreement.

Milestone Financial Services, Inc. did not submit a Statement of Answer or a Settlement Agreement.
CASE SUMMARY

Claimant asserted the following causes of action in the Statement of Claim and the Amended Statement of Claim: expungement of occurrence Numbers 211160, 283615 and 787818.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested compensatory damages in the amount of $1.00 and expungement of occurrence numbers 211160, 283615, and 787818 from his CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent American Capital Partners, LLC did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

By correspondence dated May 29, 2019, Claimant filed a Motion to Amend to add ACP as a Respondent. Claimant’s motion included a Stipulation dated May 21, 2019 between Claimant and ACP to add ACP as a Respondent.

By Order dated June 14, 2019, the Arbitrator granted Claimant’s Motion to Amend.

By correspondence dated May 29, 2019, Claimant withdrew his claims against Respondents Milestone Financial Services, Inc. and First Asset Management, Inc.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customers in the underlying complaints in occurrence numbers 211160 and 787818 with notice of his expungement request and notice of the their right to participate and testify at the expungement hearing. The customers did not participate in the expungement hearing and did not contest the Claimant’s request for expungement.

Claimant informed the arbitrator that he was unable to obtain an address for the customer in occurrence number 283615 and that firm records have long been disposed of (both original employing firms Milestone Financial Services, Inc. and First Asset Management, Inc. having been terminated members).

The Arbitrator conducted a recorded in-person hearing on December 4, 2019 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent ACP did not appear at the evidentiary hearing. The Arbitrator determined that the hearing would proceed without Respondent ACP present, in accordance with the Code.
At the hearing, the Claimant withdrew his request for $1.00 in compensatory damages.

The Arbitrator reviewed the BrokerCheck® Report for Edward Michael Cahill.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the occurrence numbers 211160, 283615, and 787818.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings, party submissions, Claimant's testimony, and Claimant's BrokerCheck® Report.

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 number 211160 from registration records maintained by the Central Registration Depository (“CRD”), for Claimant Edward Michael Cahill (CRD# 2310758), with the understanding that, pursuant to Notice to Members 04-16, Claimant Edward Michael Cahill 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 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:

The underlying claim involved a claim of unauthorized trading and churning made in 1997. Claimant was technically assigned as the registered person on the customer's account as his employer was in the process of being sold. However, he had no interaction of any sort with the customer and was not involved in any sales practice acts or violations regarding the account. The firm investigated the complaint and denied it. Nothing further was done by the customer.
2. The Arbitrator recommends the expungement of all references to occurrence number 283615 from registration records maintained by the Central Registration Depository ("CRD"), for Claimant Edward Michael Cahill (CRD# 2310758), with the understanding that, pursuant to Notice to Members 04-16, Claimant Edward Michael Cahill 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 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:

The matter involved a claim of an unsuitable investment in Microsoft around the time of the so-called tech crash in 1998. Claimant recalled that the customer was a highly sophisticated investor with a speculative, aggressive growth profile. Microsoft was then and is now a suitable investment for such purposes. The claim was investigated by the firm, and by the NASD, which took no action.

3. The Arbitrator recommends the expungement of all references to occurrence number 787818 from registration records maintained by the Central Registration Depository ("CRD"), for Claimant Edward Michael Cahill (CRD# 2310758), with the understanding that, pursuant to Notice to Members 04-16, Claimant Edward Michael Cahill 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 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:
The claim in this matter, almost 20 years old, involved an alleged failure to sell a position in Fruit of the Loom common stock. Claimant testified that there had been no such instruction from the client, which would have been essentially counter-intuitive from the representative’s financial perspective. The claim was denied by the firm and subsequently went to arbitration. After a three day hearing on the merits, a unanimous NASD panel dismissed it in its entirety.

**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 |

*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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents American Capital Partners, LLC, First Asset management, Inc., and Milestone Financial Management, Inc. are each assessed the following:

| Member Surcharge | =$ 150.00 |

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

| August 1, 2019, postponement by Claimant | Waived |
| September 17, 2019, postponement by Claimant | =$ 50.00 |

| Total Postponements Fees | =$ 50.00 |

The Arbitrator has assessed the $50.00 postponement fees to Claimant.

**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:

| August 1, 2019, postponement requested by Claimant | =$ 600.00 |

| Total Last Minute Cancellation Fees | =$ 600.00 |

The Arbitrator has assessed the $600.00 last minute cancellation 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:

One (1) pre-hearing session with a single arbitrator @ $50.00/session = $ 50.00
Pre-hearing conference: March 26, 2019 1 session

One (1) hearing session on expungement request @ $50.00/session = $ 50.00
Hearing Date: December 4, 2019 1 session

Total Hearing Session Fees = $ 100.00

The Arbitrator has assessed the $100.00 hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.
I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature

Robert E. Anderson
Sole Public Arbitrator

12/16/2019
Signature Date

December 19, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)