

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Richard Michael Wesselt

Case Number: 19-01835

vs.

Respondent  
SA Stone Wealth Management Inc.

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

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

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

**CASE INFORMATION**

Statement of Claim filed on or about: June 27, 2019.

Richard Michael Wesselt signed the Submission Agreement: June 27, 2019.

Statement of Answer and Counterclaim filed by Respondent on or about: September 26, 2019.

SA Stone Wealth Management Inc. signed the Submission Agreement: September 26, 2019.

**CASE SUMMARY**

Claimant asserted the following cause of action: request for expungement of Occurrence Number 1939912.

Respondent did not oppose Claimant's request for expungement.

In the Counterclaim, Respondent asserted the following cause of action: breach of contract for indemnification related to customer complaints, responding to FINRA inquiries or defending arbitrations.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of the underlying claim from his Central Registration Depository ("CRD") record pursuant to FINRA Rule 2080(b)(1)(A); 2080(b)(1)(C); compensatory damages in the amount of \$1.00 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not oppose Claimant's request for expungement, but objected to the request for \$1.00 in compensatory damages and further requested that the monetary damages be denied and dismissed in its entirety.

In the Counterclaim, Respondent requested monetary damages of \$32,972.60 as indemnification/reimbursement for costs, fees and disbursements related to prior complaints and arbitrations; declaratory judgment regarding future costs and fees associated with a FINRA inquiry; and such other and further relief as the Arbitration Panel deems to be just and equitable.

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

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On November, 8, 2019, Respondent filed with FINRA Dispute Resolution, a notice withdrawing all Counterclaims.

Claimant provided FINRA Office of Dispute Resolution with proof, dated December 13, 2019, that the customer related to Occurrence Number 1939912 was notified of the expungement request and of the right to participate and testify at the expungement hearing. The customer was also served with a copy of the Statement of Claim and date of the scheduled hearing.

The Arbitrator conducted a recorded telephonic hearing on January 7, 2020, so the parties could present oral argument and evidence on Richard Michael Wesselt's request for expungement.

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

The customer in the underlying complaint related to Occurrence Number 1939912 did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Richard Michael Wesselt and the settlement document, considered the amount of payment made to the customer, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customer not opposing the request for expungement. The Arbitrator also noted that Richard Michael Wesselt did not contribute to the settlement amount.

The Arbitrator noted that Richard Michael Wesselt 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: Pleadings; Claimant's testimony under oath and copy of Life Insurance application of the customer dated 1/15/2016.

### **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 1939912 from registration records maintained by the Central Registration Depository ("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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

The customer had experience as an investor with indexed annuities and whole life insurance. The products were approximately 25 percent of her liquid net worth. The products were sold at arm's length following full disclosure and receipt of disclosure documentation. The Claimant reviewed the terms such as time horizons, rates of return, surrender charges, dividend guarantees and information on the life insurance company's operation with the customer. The choice of products met the customer's goals, objectives and risk tolerance at the time. Claimant had no conflict of interest and was transparent as to compensation and fees. Further Claimant would speak to

the customer two or three times a year over a five-year period, and no dissatisfaction by the customer was ever raised.

Based on the foregoing no proof of negligence, negligent supervision, breach of contract or fraud, on the part of the Claimant, was ever produced. The allegation of unsuitability is false because Claimant's conduct was at all times in accordance with the standard of FINRA Rule 2111, as Claimant had a reasonable basis to believe that the products were suitable investments for the customer based on the reasonable due diligence of Claimant and Respondent to ascertain the customer's investor profile as well as on the direct statements of the customer herself. The allegation of unsuitability is factually impossible because the recommended investments were specifically in line with the customer's investor profile as stated to the Claimant by the customer both orally and in the executed documents that were required for her investments, and the allegation of breach of a fiduciary duty was false, factually impossible and clearly erroneous because the transaction was performed under a suitability standard, not a fiduciary standard and as such, Claimant owed no specific fiduciary duty to the customer. Notwithstanding this, Claimant at all times acted, taking into consideration the customer's best interest and risk tolerance in furtherance of the customer's investment objectives.

2. Any and all claims for relief not specifically addressed herein is 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 event 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



**ARBITRATOR**

Julie K. Chapin

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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**

***Julie K. Chapin***

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Julie K. Chapin  
Sole Public Arbitrator

01/13/2020

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Signature Date

January 14, 2020

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