In the Matter of the Arbitration Between:

Claimant
Thomas Richard Mathews, Jr.

vs.

Respondent
Transamerica Financial Advisors, Inc.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES


CASE INFORMATION
Statement of Claim filed on or about: July 23, 2019.
Claimant signed the Submission Agreement: July 23, 2019.

Statement of Answer filed by Respondent on or about: September 9, 2019.
Respondent signed the Submission Agreement: September 5, 2019.

CASE SUMMARY
Claimant asserted a claim seeking expungement of a civil litigation that evolved into an NASD arbitration case, occurrence number 1009016 (“Underlying Arbitration”), from his Central Registration Depository (“CRD”) records.

Unless specifically admitted in the Statement of Answer, Respondent took no position regarding Claimant’s request for expungement and noted that it did not report the Underlying Arbitration as Claimant was not registered with Respondent at that time.¹

¹ The Underlying Arbitration was reported by Claimant’s former firm, WMA Securities, Inc., which is now defunct.
RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. The Arbitrator recommend that the Underlying Arbitration be expunged from his public and non-public record as maintained by CRD; and
2. Respondent pay Claimant $1.00 in compensatory damages.

In the Statement of Answer, Respondent denied Claimant’s request for monetary relief and requested that Claimant pay all forum fees in connection with this matter.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 6, 2019, the Arbitrator issued an Order for the parties to provide a current copy of Claimant’s BrokerCheck® Report and any documents, answers or explanation of any attempts to notify the customer in the Underlying Arbitration (“Customer”).

On November 8, 2019, Claimant filed a copy of a letter dated November 7, 2019 to the Customer enclosing a copy of the Statement of Claim and notifying her of the date/time of the Initial Prehearing Conference (“IPHC”).

On November 12, 2019, the Arbitrator conducted the IPHC. The Customer participated in the IPHC, along with counsel for the parties.

On November 26, 2019, Claimant filed a copy of a letter dated November 26, 2019 sent to the Customer notifying her of the date/time/location of the expungement hearing.

On December 2, 2019, the Customer filed a letter opposing Claimant’s expungement request (“Customer’s Opposition”).

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

Respondent participated by telephone in the expungement hearing and, as stated in the Statement of Answer, did not contest the request for expungement. The Customer did not participate in the hearing but, as stated in the Customer’s Opposition, contested the expungement request.

On December 4, 2019, Claimant filed a rebuttal to the Customer’s Opposition and requested the Arbitrator grant the expungement request.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator also reviewed the settlement documents between Claimant, Claimant’s former firm, other unnamed individuals and entities and the Customer. The Arbitrator 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 the Customer not opposing the request for expungement.

The Arbitrator noted that in the Underlying Arbitration, the Customer alleged damages of $233,000.00 and settled for $475,000.00, with Claimant contributing $10,000.00 through his E&O insurance carrier. Although Claimant contributed to the settlement amount, the Arbitrator is recommending expungement noting that Claimant testified that contributed to put an end to the litigation and because of his close friendship with the Customer and her husband ("Mr. M").

The Arbitrator also noted that the settlement amount is more than the amount of damages requested by the Customer. The Arbitrator noted that the Underlying Arbitration originated as a court case involving, among other issues, the denial of payment of death benefit proceeds. In settling the matter for $475,000.00, the Arbitrator concluded that such amount also disposed of the death benefit payment issue in addition to the suitability claim alleged in the Underlying Arbitration.

The Arbitrator noted that Claimant 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: Statement of Claim; Claimant’s testimony at the expungement hearing; Customer’s Opposition; Claimant’s December 4, 2019 rebuttal to the Customer’s Opposition; and Claimant’s Exhibit 4 consisting of the following documents: Claimant’s BrokerCheck® Report; October 22, 1998 email from Mr. M to Claimant; two New Account Applications for Variable Contracts both dated June 29, 1999; Variable Universal Life Insurance Ledger Illustration dated June 28, 1999; June 29, 1999 letter from Claimant to underwriting department; memorandum regarding Mr. M; New Account Application for Mutual Funds dated August 16, 1999; September 14, 1999 letter from the Customer to mutual fund company; amendment to life insurance application dated October 1, 1999; life insurance policy information; change request form; Customer’s hierarchy; written policy detail report dated April 12, 2001; Complaint letter dated April 2, 2001 from the Customer’s father-in-law to Claimant; and May 14, 2001 letter to insurance company’s law department from Claimant.

The parties present at the expungement hearing have 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:

1. Claimant’s request for $1.00 in damages is denied.

2. The Arbitrator recommends the expungement of all references to the Underlying Arbitration, occurrence number 1009016, from registration records maintained by the CRD, for Claimant Thomas Richard Mathews, Jr. (CRD# 1109573), with the
understanding that, pursuant to Notice to Members 04-16, Claimant Thomas Richard Mathews, Jr. 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 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:

Claimant and Mr. M had a long-standing business relationship, which blossomed into a close friendship over the years. During the expungement hearing, Claimant presented testimony and correspondence illustrating the closeness of the relationship that existed between Mr. M and Claimant. The Customer does not deny that such relationship existed. As the Customer stated in her opposition, “The only thing I knew was that [Claimant] was my husband’s friend, who he trusted to help me.”

After Mr. M moved to Atlanta, he and Claimant formed a team and partnership performing as financial advisors. Mr. M died in 1999. Prior to his passing, Mr. M obtained two term life insurance policies each with a death benefit of $500,000.00 (“Policies”). Before his death, Mr. M instructed Claimant to look after his family by putting the death benefit proceeds from the Policies into six variable universal life ("VUL") policies for the benefit of his wife and five children.

According to Claimant’s testimony and the Statement of Claim, the Customer stated that she had other income to cover monthly living expenses and desired to have the proceeds from the Policies grow for the future. The VUL income generated would be tax-free and the monies were protected against creditors. The Customer, who was in the process of getting her financial licenses so she could take over Mr. M’s book of business, also had an income from being an artist and anticipated an income of between $100,000.00 and $140,000.00 per year. By taking over Mr. M’s business team, the Customer also became the broker of record on her own accounts. As an example, when she paid the second year premiums on the VUL policies, she earned the commissions on those premiums.

In February 2002, the Customer brought a lawsuit in superior court alleging the VUL policies were unsuitable. In September 2002, the superior court sent the matter to NASD (predecessor to FINRA) to be arbitrated. Respondents to the Underlying Arbitration were Claimant, other individuals associated with Claimant’s firm, another firm ("Firm W") and the life insurance company, which
was allegedly refusing to pay death benefits on one of the $500,000.00 Underlying Policies. On May 17, 2004, the Underlying Arbitration settled for $475,000.00.

After reviewing all the documentary evidence and testimony of Claimant, as well as the Customer’s Opposition submitted before the expungement hearing and Claimant’s rebuttal thereto, the Arbitrator finds that Claimant exercised due diligence in following the specific instructions of Mr. M to invest his death benefit proceeds into VUL policies for the benefit of his wife and their five children.

As to the claim of unsuitability, Claimant presented documentation showing the step-by-step review of the Customer’s needs, 10 year projections as to how the proceeds of the VUL policies would be funded and reasonable growth projections. The Customer applied for the VUL policies and requested that the funds be invested in “long-term growth assets.” Moreover, the records show that the Customer met the long-term objectives with the insurance proceeds from one of the Underlying Policies and had an immediate $50,000.00 from those proceeds to pay for expenses after Mr. M’s death. The Customer’s assertion that she and Mr. M never discussed this matter does not rebut Claimant’s claims. Therefore, the Arbitrator finds that the Customer’s claim, allegation or information is clearly erroneous and that the same is false.

3. Any and all claims for relief not specifically addressed herein are denied.

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** = $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 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** = $150.00

**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 @ $50.00/session = $50.00
Pre-hearing conference: November 12, 2019 1 session

One (1) hearing session on expungement request @ $50.00/session = $50.00
Hearing Date: December 3, 2019 1 session

Total Hearing Session Fees = $100.00

The Arbitrator has assessed $100.00 of the 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 that I am the individual described herein and who executed this instrument which is my award.

Arbitrator's Signature

James C. Hoover

Sole Public Arbitrator

December 18, 2019

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