

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Marc Alan Seeherman

Case Number: 19-02657

vs.

Respondent
VSR Financial Services, Inc.

Hearing Site: New York, New York

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant Marc Alan Seeherman: Steven E. Mellen, Esq., Winget, Spadafora & Schwartzberg, LLP, Miami, Florida.

For Respondent VSR Financial Services, Inc.: Jeremy Carr, Esq., Cetera Financial Group, El Segundo, California.

CASE INFORMATION

Statement of Claim filed on or about: August 29, 2019.

Marc Alan Seeherman signed the Submission Agreement: August 29, 2019.

Statement of Answer filed by Respondent on or about: October 21, 2019.

VSR Financial Services, Inc. signed the Submission Agreement: September 23, 2019.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

In the Statement of Answer, Respondent did not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1681541, compensatory damages in the amount of \$1.00; and any just and further relief that the Arbitrator deems just.

In the Statement of Answer, Respondent requested that the Arbitrator deny Claimant's request for compensatory damages and assess all forum fees and costs against Claimant. Respondent did not oppose Claimant's request for expungement and requested that the Arbitrator allow Respondent to attend the expungement hearing telephonically.

At the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

The Arbitrator conducted a recorded, telephonic hearing on March 27, 2020 so the parties could present oral argument and evidence on Claimant's request for expungement.

By correspondence dated February 26, 2020, Claimant's counsel notified FINRA Dispute Resolution Services that one of the customers who had filed the underlying complaint (also the trustee to the trust which had the trust account) passed away on November 2, 2017 and attached a copy of the obituary published in the New York Times on November 5, 2017. In the February 26, 2020 correspondence to FINRA Dispute Resolution Services, Claimant's counsel indicated that on February 10, 2020, he sent a letter via certified mail and attached a copy of that letter, which was addressed to the three customers who had filed the underlying complaint, (the surviving individual customer, the deceased customer [who was the trustee of the trust which had the trust account] and the trust) at the last known address of the surviving individual customer and which advised of Claimant's expungement request, that they were entitled to participate in the expungement hearing and/or submit a written statement regarding Claimant's request for expungement and enclosed a copy of Claimant's Statement of Claim. In the February 26, 2020 correspondence to FINRA Dispute Resolution Services, Claimant's counsel indicated that based upon the information available, he believes that the correspondence (sent on February 10, 2020) was returned undeliverable, attached tracking information from the USPS and indicated that Claimant was not in possession of any other address for the customer to whose last known address the letter had been sent. He also stated that Claimant does not know the successor trustee to the trust.

Claimant's counsel also submitted a letter dated March 27, 2020 to FINRA Dispute Resolution Services stating that on March 24, 2020, Claimant's counsel contacted counsel who had represented the customers in the arbitration related to the underlying complaint to notify him of the upcoming expungement hearing. Claimant's counsel attached a copy of the March 24, 2020 email exchange with that counsel to the March 27, 2020 correspondence to FINRA Dispute Resolution Services. In his reply email to Claimant's counsel, the attorney for the customers stated "Working remotely keeping the machine going. No need for us to show up."

None of the customers or anyone on their behalf participated in the expungement hearing or presented any opposition to Claimant's request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for Claimant Marc Alan Seeherman. The Arbitrator noted that a prior arbitration panel or court has not previously rule on expungement of the same occurrence in the Central Registration Depository ("CRD").

The Arbitrator also reviewed the settlement documents, considered the amount of payments made to the underlying customers, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement. The Arbitrator noted that Claimant contributed to the settlement amount due to firm policy.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, 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 1681541 from registration records maintained by the CRD for Claimant Marc Alan Seeherman (CRD Number 1131557) with the understanding that, pursuant to Notice to Members 04-16, Claimant Marc Alan Seeherman 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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The underlying complaint was made by three customers, two individuals (father and son, respectively "Customer 1" and "Customer 3") and a trust ("Customer 2"), the trustee of which was Customer 1. The testimony of Claimant and the documentary evidence show that each of the three customers had substantial assets and income. Customer 1's new account form dated December 2, 2003 indicated that he had very high investment income, exclusive and total net worth, and current liquid assets and that his investment objectives were current income, growth with current income, growth, aggressive growth and tax advantages. That form indicated that Customer 1 had investment experience in partnerships, margin trading, real estate, stocks,

commodities and options. The Statement of Claim indicates that on or about February 2, 2008, Customer 1 completed an updated Account Form wherein he reiterated that he sought primarily aggressive growth and income from his investments. The Statement of Claim indicates that during the course of Customer 1's investment relationship with Claimant, Customer 1 invested approximately 18% of his exclusive net worth, into various alternative investments and that was well within the applicable guidelines regarding alternative investments. Claimant testified that Customer 1 was a very sophisticated, successful, knowledgeable businessperson and investor who did his own due diligence and made his own investment decisions.

Customer 2's (the trust) new account form dated July 15, 2008 also disclosed very high total and exclusive net worth, income, and current liquid assets with zero need for liquidity. Additionally, the form indicated that Customer 2 had approximate 20 years investment experience in real estate, stocks, commodities and mortgages and ranked investment objectives and risk tolerance of "aggressive" for (1) growth, (2) growth and income and (3) income in that order.

The new account form dated July 23, 2008 for Customer 3 also disclosed very high total and exclusive net worth, annual income, current liquid assets and indicated investment experience with mutual funds (5 years), partnerships (20 years), bonds/CDs (10 years), real estate (20 years) and stocks (30 years). Customer 3's new account form ranked investment objectives and risk tolerance of "aggressive" for (1) growth, (2) growth and income and (3) income in that order. Claimant testified that Customer 3 was a college educated successful businessperson who owned and operated a company.

Claimant testified that the three customers sought alternative investments seeking aggressive growth and that the amounts that they invested were within the applicable guidelines for alternative investments. The Claimant testified that the three customers were provided with the private placement memorandum and/or prospectus for each potential investment. Customer 1 would review the material and did due diligence on his own behalf and on behalf of Customer 2 (the trust.). Claimant testified that if Customer 1 felt the investment was sound and met the investment goals for the three customers, Customer 1 would invest for himself and Customer 2 and that he would discuss the possible investments with Customer 3. Claimant testified that Customer 3 made his investment decisions based on Customer 1's recommendations and his (Customer 3's) own analysis of the possible investments.

I find the testimony of the Claimant to be credible. I find Customer 1 (the trustee of Customer 2) and Customer 3 were sophisticated, knowledgeable, successful businesspeople and were experienced investors who were looking for aggressive investments. I find that the investments that the customers made through Claimant and Respondent were a reasonable percentage of their total investments and other assets and that these investments were not unsuitable for these customers, given their financial condition, the investment objectives and risk tolerance of each customer and the knowledge, experience and sophistication of Customer 1 and Customer 3. I find that Customer 1 made his investment decisions for his account

and for the trust account (Customer 2) and that Customer 3 made his investment decisions based on Customer 1's recommendations and his (Customer 3's) own analysis of the possible investments.

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

FEES

Pursuant to the Code of Arbitration Procedure ("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
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, VSR Financial Services, Inc. is assessed the following:

Member Surcharge	= \$ 150.00
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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:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session	= \$ 100.00
Pre-hearing Conferences: January 9, 2020	1 session
March 11, 2020	1 session
One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: March 27, 2020	1 session
<hr/> Total Hearing Session Fees	<hr/> = \$ 150.00

The Arbitrator has assessed the \$150.00 hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATOR

Ted M. Rosen

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Sole Public Arbitrator

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

Ted M. Rosen

Ted M. Rosen
Sole Public Arbitrator

05/27/2020

Signature Date

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May 27, 2020

Date of Service (For FINRA Dispute Resolution Services use only)