Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Andrew Lane Howard

vs.

Respondent
Edward Jones

Case Number: 19-03263
Hearing Site: San Francisco, California

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 Andrew Lane Howard (“Claimant”): Erica Harris, Esq., Of Counsel, HLBS Law, Westminster, Colorado.


CASE INFORMATION

Statement of Claim filed on or about: October 31, 2019.
Claimant signed the Submission Agreement: October 31, 2019.

Statement of Answer filed by Respondent on or about: December 23, 2019.
Respondent signed the Submission Agreement: December 31, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint, occurrence number 1351349, (“Underlying Complaint”) from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses, but deferred to the authority of the Arbitrator to make any determination regarding expungement in this case.
RELIEF REQUESTED

In the Statement of Claim, Claimant requested:
1. Expungement of the Underlying Complaint from his CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of the Underlying Complaint from his CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Compensatory damages in the amount of $1.00 from Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:
1. Claimant’s request for damages against Respondent be denied;
2. All costs be assessed to Claimant; and
3. Such other relief as the Arbitrator deems just and proper in the circumstances.

At the close of the hearing, Claimant withdrew the 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.

On April 10, 2020, Claimant submitted a LexisNexis death record for the customer in the Underlying Complaint ("Customer").

The Arbitrator conducted a recorded, telephonic hearing on May 26, 2020 so the parties could present oral argument and evidence on Claimant’s request for expungement. Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The Arbitrator noted that the Customer was deceased, and did not require that the Customer’s estate be notified of the expungement request or hearing. Accordingly, no one for the Customer participated in the expungement.

The Arbitrator reviewed Claimant’s BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that Claimant was not a signatory to the settlement agreement, the settlement was not conditioned on any party to the settlement not opposing the expungement request and Claimant did not contribute to the settlement amount. The Arbitrator found that after a long series of negotiations, Respondent settled for half the claimed amount, which was less than the probable cost of litigation.
In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s BrokerCheck® Report; Statement of Claim; Claimant’s testimony; death record for Customer; Exhibit 1 – 2006-04-26 Hartford Annuity Ownership Change Request; Exhibit 2 – 2006-05-01 Taxable Ownership Change Worksheet; Exhibit 3 – 2007-05-09 Letter from Respondent’s Compliance Officer to Customer; Exhibit 4 – 2007-06-15 Letter from Respondent’s Compliance Officer to Customer regarding Settlement of Claim; Exhibit 5 – 2007-07-6 Letter from Respondent’s Compliance Officer to Customer regarding amended offer; Exhibit 6 – 2007-08-09 Letter from Respondent’s Compliance Officer to Customer to Burton regarding the Underlying Complaint; Exhibit 7 2007-11-08 Letter from Respondent’s Compliance Officer to Customer regarding Settlement of Claim, Exhibit 8 – Settlement Document.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 the Underlying Complaint, occurrence number 1351349, from registration records maintained by the CRD for Claimant Andrew Lane Howard (CRD Number 4752191) with the understanding that, pursuant to Notice to Members 04-16, Claimant Andrew Lane Howard 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 false.

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

Summary of Facts

The Customer, who had experience with stocks, bonds, mutual funds, certificates of deposit and annuities prior to becoming Claimant’s client, requested that Claimant help her effectuate a change of ownership of a Hartford annuity, naming her niece as a co-owner. Claimant did not sell the annuity to the Customer and had no knowledge of it until the Customer made her request.

Claimant, who did not hold himself out as qualified to give tax advice, asked for clarification as to whether the Customer wanted to add her niece as a beneficiary
rather than as an owner. The Customer was adamant that she wanted to add the niece as an owner.

Hartford provided the change of ownership forms, which Claimant helped the Customer to complete. The forms clearly stated that taxes would come due upon the change of ownership. The Customer received tax advice from her CPA and did not seek tax advice from Claimant. The change of ownership caused a $45,000.00 taxable event. The Customer then claimed what she really wanted was not a change in ownership but a 1035 tax-free exchange and requested reimbursement of the $45,000.00 paid in taxes.

Analysis

It is difficult to understand how the Customer could think adding her niece as an owner to the annuity could be accomplished through a 1035 tax-free exchange. An exchange is where one investment vehicle is exchanged for another. Here there was no additional investment to exchange. The annuity was the sole investment at issue; an exchange of an investment with itself is likely impossible and certainly not recognized by known practices.

The change of ownership documents were the forms of Hartford, not Respondent, and clearly indicated that the change of ownership created a taxable event. The Customer had notice of the tax impact of the ownership change. She had the opportunity to name her niece as a beneficiary and declined to do so. The Customer had access to independent tax advice from her CPA; at no time did Claimant hold himself out as a tax advisor nor was he asked about tax impacts at any time. Ironically, taxes would come due at some point in any event, with or without the ownership change.

Conclusion

It is apparent that the facts alleged in the customer dispute on Claimant’s CRD records are untrue, false and clearly erroneous. Therefore, the Arbitrator recommends that the Underlying Complaint on Claimant’s CRD records be expunged.

2. 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 Dispute Resolution Services 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, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

- One (1) pre-hearing session with a single Arbitrator @ $50.00/session
  - Pre-hearing Conference: March 2, 2020
  - 1 session
  - = $ 50.00

- One (1) hearing session on expungement request @ $50.00/session
  - Hearing Date: May 26, 2020
  - 1 session
  - = $ 50.00

**Total Hearing Session Fees**
= $ 100.00

The Arbitrator has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services 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

Daniel M. Yamshon
Sole Public Arbitrator

06/03/2020
Signature Date

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