Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Steven Philip Southworth

vs.

Respondent
Merrill Lynch, Pierce, Fenner, & Smith Inc.

Case Number: 19-03315
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


CASE INFORMATION

Statement of Claim filed on or about: November 6, 2019.
Steven Philip Southworth signed the Submission Agreement: November 6, 2019.


CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of his Form U5 maintained by the Central Registration Depository (“CRD”).

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.
RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of defamatory language on his Form U5; $1.00 in compensatory damages; and any other relief the Panel deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant’s request for expungement be denied; and that Claimant’s request for compensatory damages be denied.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 28, 2020, Respondent Merrill Lynch, Pierce, Fenner, & Smith Inc. filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure (“Code”) (“Motion to Dismiss”). On March 26, 2020, Claimant filed a response opposing the Motion to Dismiss. On March 31, 2020, Respondent filed a Reply in further support of the Motion to Dismiss. By Order dated April 9, 2020, the Arbitrator denied the Motion to Dismiss.

On April 13, 2020, Respondent Merrill Lynch, Pierce, Fenner, & Smith Inc. filed a Motion to Rescind the April 9, 2020 Motion to Dismiss Order and requested a recorded pre-hearing conference be held to hear oral arguments. On April 14, 2020 Claimant filed a response opposing the Motion to Rescind the Motion to Dismiss Order. By Order dated April 24, 2020, the Arbitrator granted Respondent’s Motion to Rescind the April 9, 2020 Motion to Dismiss Order.

On May 7, 2020, the Arbitrator heard oral arguments on the Motion to Dismiss. On June 3, 2020, the Arbitrator granted the Motion to Dismiss on the grounds that:

This matter is a claim to have a “mark” on the Claimant’s Form U5 expunged. The underlying matter was settled as indicated on the Claimant’s BrokerCheck. Respondent has moved to dismiss the claim relying on FINRA Code Section 13206; “Time Limitation on Submission of Claim.” FINRA Code section 13206(a) provides that, “no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The Panel will resolve any questions regarding eligibility of a claim under this rule.” FINRA Rule 13314 provides that, “the panel has the authority to interpret and determine the applicability of all provisions under the Code. Such Interpretations are final and binding upon the parties. Neither party has brought to the Arbitrator’s attention any authoritative FINRA guidance on the applicability of Code section 13206. The Claimant’s position is that even though the “occurrence or event” that gives rise to his Claim is thirty years old, it is “...continuous and ongoing every single day...” and the six year rule does not apply. Noting that there is no "bright-line rule" regarding the "occurrence or event giving rise to the claim."
The integrity of FINRA rests upon the concept that it is a self-regulating organization that will give both parties that come before it a full and fair hearing. Also, that publicly available information, such as the BrokerCheck and Form U5s, is accurate.

The Claimant in this matter had an opportunity to confront the claim and used that opportunity to settle that claim thirty years ago. He has waited in excess of thirty years to bring this request for expungement. The “event” was the resolution of the thirty plus year old claim.

Even under the most liberal, stretched, interpretation of Rule 13206, and without guidance from FINRA on exceptions to the six year rule, the Claimant’s position is inconsistent with the plain language of Rule 13206 and it is clearly unfair to the Respondent to require it to defend a claim that is more thirty years old.

Respondent Merrill Lynch, Pierce, Fenner, & Smith Inc.’s Motion to Dismiss pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court. Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

**AWARD**

After considering the pleadings, the testimony and evidence presented at the pre-hearing conference, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed in their entirety without prejudice.

**FEES**

Pursuant to the Code of Arbitration Procedure (“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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch, Pierce, Fenner, & Smith Inc. 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:

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<thead>
<tr>
<th>Description</th>
<th>Date</th>
<th>Sessions</th>
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<tbody>
<tr>
<td>Two (2) pre-hearing session with a single Arbitrator</td>
<td>April 1, 2020</td>
<td>1 session</td>
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<tr>
<td>Pre-hearing Conference</td>
<td>May 7, 2020</td>
<td>1 session</td>
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Total Hearing Session Fees = $100.00

The Arbitrator has assessed $50.00 of the hearing session fees to Claimant.

The Arbitrator has assessed $50.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.
ARBITRATOR

Peter A. Goldman - 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

Peter A. Goldman

Sole Public Arbitrator

06/06/2020

Signature Date

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June 08, 2020
Date of Service (For FINRA Dispute Resolution Services use only)