In the Matter of the Arbitration Between:

Claimant  Colette Erica Wigart  

vs.

Respondent  Merrill Lynch, Pierce, Fenner & Smith Inc.

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

This case was administered under the Special Proceeding option for simplified cases.

**REPRESENTATION OF PARTIES**

Claimant Colette Erica Wigart (“Claimant”) appeared pro se.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. (“Respondent”): Angelina T. Evans, Esq., Seyfarth Shaw LLP, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: February 24, 2020. 

Statement of Answer filed by Respondent on or about: July 30, 2020.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a termination statement from her Form U5 filed by Respondent and maintained by the Central Registration Depository (“CRD”), based on the defamatory in nature of the entry.

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:

1. Expungement of the U5 Termination Disclosure found under Occurrence Number 1998369 on Claimant’s CRD records; and

2. Compensatory damages in the amount of $50,000.00.

In the Statement of Answer, Respondent requested:

1. An Award in its favor and against Claimant;

2. Dismissal of Claimant’s Statement of Claim in its entirety; and

3. Any such other relief as the Arbitrator deems just and proper.

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 December 3, 2020 so the parties could present oral argument and evidence on Claimant’s request for expungement.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

FINDINGS

Claimant was terminated by Respondent because she opened a savings account with Bank of America on behalf of her client in order to deposit her client’s proceeds from the sale of her house, allegedly without the client’s authorization. Claimant’s request for expungement from her U5 should be granted for the following reasons:

1. The client was not interviewed by Respondent nor did she sign an affidavit supporting Respondent’s allegations.

2. The client was known to have cognitive difficulties. On several occasions she complained that certain trades in her account (not by Claimant) were not authorized when in fact they were. Client’s financial adviser also testified that “it would not surprise me if she (the client) opened an account and forgot about it”. As a result, Respondent terminated her as a brokerage client even though her account balance was in excess of $500,000.00.

3. Several former employees of Respondent testified that they were encouraged to open new accounts for clients even if the client had existing accounts with Respondent. The policy regarding the opening of new accounts was ambiguous and not uniformly enforced.
4. Claimant only earned $700.00 by opening the account. No reasonable person would have done so had he or she been aware of the severe consequences that would ensue.

5. There was no claim that Claimant improperly appropriated funds from the client’s account.

Claimant requested $50,000.00 in damages. Respondent knew or should have known that by stating in the U5 that Claimant had opened a bank account without the client’s authorization she would be unemployable in the banking industry. Indeed, her manager testified he would not hire someone with this statement on her U5. And Claimant testified she had applied for a position at a number of banks with no success despite years of experience in the industry.

Under Nevada law, Respondent enjoys a conditional privilege to the charge of defamation, but the privilege can be overcome by a showing of “reckless disregard for the truth” (Bank of America Nevada v. Boudreau 115 Nevada 263 (1999)). The failure of Respondent to interview the client and accept the allegations at face value, despite her well-known memory impairment, and for the reasons cited above demonstrates reckless disregard for the truth and overcomes the privilege.

**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 the Reason for Termination and Termination Explanation in Section 3 of Claimant Colette Erica Wigart’s (CRD 1973260) Form U5 filed by Merrill Lynch, Pierce, Fenner & Smith Inc. on September 24, 2018 and maintained by the CRD. The Reason for Termination shall be changed to “Permitted to Resign.” The Termination Explanation shall be replaced with the following language: “The Associated Person was permitted to resign because the savings account opened at Bank of America by her on behalf of a client was based on the client’s authorization.” This directive shall apply to all references to the Reason for Termination and Termination Explanation.

   The Arbitrator further recommends the expungement of all references to Occurrence Number 1998369 from the registration records maintained by the CRD for Claimant Colette Erica Wigart. Any “Yes” answers should be changed to “No” as applicable.

   The Arbitrator is making these recommendations based on the defamatory nature of the information. The registration records are not automatically amended to include the changes indicated above. Claimant Colette Erica Wigart must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure (“CRED”) Department for review.

2. Respondent is liable for and shall pay Claimant $50,000.00 in compensatory damages.
3. Respondent is liable for and shall pay Claimant $150.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.

**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 = $600.00

*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, Respondent is assessed the following:

- Member Surcharge = $750.00
- Member Process Fee = $1,750.00

**Late Pre-hearing Cancellation Fees**
Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

- November 27, 2020 cancellation requested by parties = $100.00

Total Late Pre-hearing Cancellation Fees = $100.00

The Arbitrator has assessed $25.00 of the late pre-hearing cancellation fees to Claimant.

The Arbitrator has assessed $75.00 of the late pre-hearing cancellation fees to Respondent.

**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 @ $450.00/session = $450.00
- Two (2) hearing sessions on expungement request @ $450.00/session = $900.00

Total Hearing Session Fees = $1,350.00

The Arbitrator has assessed $900.00 of the hearing session fees to Claimant.

The Arbitrator has assessed $450.00 of the hearing session fees to Respondent.
All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.
ARBITRATOR

Dean J. Dietrich - 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

Dean J. Dietrich
Sole Public Arbitrator

01/27/2021
Signature Date

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January 28, 2021
Date of Service (For FINRA Dispute Resolution Services use only)