

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Adam Scott Kaplan
Daniel Evan Kaplan

Case Number: 19-00803

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith 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 Persons vs. Member

REPRESENTATION OF PARTIES

For Claimants Adam Scott Kaplan, and Daniel Evan Kaplan: John D. Singer, Esq., Singer Deutsch LLP, New York, New York.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc. ("Merrill Lynch"): Kenneth J. Turnbull, Esq., Morgan, Lewis & Bockius LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 25, 2019.

Amended Statement of Claim filed on or about: June 20, 2019.

Adam Scott Kaplan signed the Submission Agreement: March 25, 2019.

Daniel Evan Kaplan signed the Submission Agreement: March 25, 2019.

Statement of Answer filed by Respondent Merrill Lynch on or about: July 26, 2019.

Merrill Lynch signed the Submission Agreement: July 31, 2019.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimants asserted the following causes of action: wrongful termination; retaliatory acts including but not limited to willful slandering, tortious interference with existing and prospective business relations, and intentional infliction of emotional distress; and expungement of Forms U5 based on the defamatory nature of the entries.

In the Statement of Answer, Respondent denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimants requested unspecified compensatory damages with statutory damages for slander, libel, tortious interference with existing and prospective business relations, and intentional infliction of emotional distress; expungement of the defamatory termination disclosures on Claimants' Forms U5; retaliation damages; punitive damages; and such other and further relief as deemed just and proper, including, but not limited to, reimbursement of all FINRA fees in connection with this arbitration.

In the Statement of Answer, Respondent requested that Claimants' claims be denied in their entirety; and an award for all fees and cost incurred in defending this arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On July 22, 2021, Claimants filed a notice of the parties' settlement of Claimants' monetary claims against Respondent. Claimants' request for expungement of their respective Forms U5 remained pending. Therefore, the Panel made no determination with respect to any of the monetary relief requests contained in the Statement of Claim and Amended Statement of Claim.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Adam Scott Kaplan's request for expungement of the Form U5 from registration records maintained by the CRD is denied.
2. Daniel Even Kaplan's request for expungement of the Form U5 from registration records maintained by the CRD is denied.

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	= \$ 1,575.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Merrill Lynch is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

July 19-23, 2021, postponement requested by the parties	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the postponement fees to Respondent.

Hearing Session Fees and Assessments

The Panel 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 Arbitrators, 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
Pre-Hearing Conference: June 11, 2020	1 session	
Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	4,500.00
Hearings:		
August 2, 2019	1 session	
September 23, 2020	1 session	
August 5, 2021	1 session	
October 26, 2021	1 session	
Three (3) hearing sessions on expungement request @ \$1,125.00/session	= \$	3,375.00
Hearing:		
October 27, 2021	2 sessions	
October 28, 2021	1 session	
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Total Hearing Session Fees	= \$	8,325.00

The Panel has assessed \$4,162.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$4,162.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Andrew M. Schmertz	-	Public Arbitrator, Presiding Chairperson
Ann Judith Gellis	-	Non-Public Arbitrator
Rick Rutman	-	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.

Concurring Arbitrators' Signatures

Andrew M. Schmertz

Andrew M. Schmertz
Public Arbitrator, Presiding Chairperson

11/16/2021

Signature Date

Ann Judith Gellis

Ann Judith Gellis
Non-Public Arbitrator

11/15/2021

Signature Date

Rick Rutman

Rick Rutman
Public Arbitrator

11/15/2021

Signature Date

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November 16, 2021

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