

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Amended and Restated Julian I. Stoopler
Living Trust

Case Number: 20-02397

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith,
Incorporated

Hearing Site: Boca Raton, Florida

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: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Amended and Restated Julian I. Stoopler Living Trust: Gary S. Menzer, Esq., Michael S. Hill, Esq. and William B. Federman, Esq., Menzer & Hill, P.A., Boca Raton, Florida.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Incorporated: Regina Pepe Martorana, Esq., Bressler, Amery & Ross, P.C., New York, New York.

*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant's counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2020.

Amended and Restated Julian I. Stoopler Living Trust signed the Submission Agreement: July 28, 2020.

Statement of Answer filed by Respondent on or about: September 17, 2020.

Merrill Lynch, Pierce, Fenner & Smith, Incorporated signed the Submission Agreement: September 17, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligent supervision; negligence; breach of contract; breach of fiduciary duty; and omission to state a material fact. The causes of action relate to Claimant's investments in primarily American Airlines Group, Inc. ("AAL") common stock.

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: compensatory damages in the amount of \$20,000,000.00; accrued statutory interest; costs; filing and hearing fees; such other relief the Panel felt is reasonable; and other remedies the Panel deemed proper and appropriate.

In the Statement of Answer, Respondent requested: dismissal with prejudice of all claims in Claimant's Statement of Claim; assessment of FINRA fees of this proceeding against Claimant; and recommendation of expungement of any reference of the above-captioned arbitration from the Central Registration Depository ("CRD") records of Unnamed Party Steven Davidson ("Davidson").

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 21, 2021, Claimant filed with FINRA Dispute Resolution Services a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On or about November 8, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Davidson, to which no response was filed.

On or about November 30, 2021, Claimant filed with FINRA Dispute Resolution Services a notice advising it would not be participating in the expungement hearing.

The Panel conducted a recorded, telephonic hearing on January 7, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Davidson.

Claimant did not participate in the expungement hearing. The Panel found that Claimant had notice of the expungement request and hearing.

The Panel reviewed the BrokerCheck® Report for Unnamed Party Davidson. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation related to the above-captioned arbitration (Occurrence Number 2083902), considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Unnamed Party Davidson did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim; Respondent's Statement of Answer; Settlement Agreement; and various records from Respondent regarding letters to Claimant and conversations with Claimant and Claimant's son.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2083902) from registration records maintained by the CRD for Unnamed Party Davidson (CRD Number 1450522) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Davidson 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 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative findings of fact:

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

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

Claimant's account was transferred from Aegis Capital Corp. to Respondent. It had a high margin balance. Unnamed Party Davidson received no compensation from the margin account. Unnamed Party Davidson suggested a hedging strategy and other recommendations including the sale of AAL stock but Claimant, an experienced financial advisor refused all recommendations. The Panel recommends expungement of Occurrence Number 2083902 pursuant to FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C).

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	= \$ 2,250.00
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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(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	= \$ 4,025.00
Member Process Fee	= \$ 7,000.00

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 Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,500.00/session	= \$ 1,500.00
Pre-Hearing Conference: November 24, 2020 1 session	
One (1) hearing session on expungement request @ \$1,500.00/session	= \$ 1,500.00
Hearing: January 7, 2022 1 session	
Total Hearing Session Fees	= \$ 3,000.00

The Panel has assessed \$750.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,250.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Gerald Silverman	-	Public Arbitrator, Presiding Chairperson
Sue Ellen D'Arcangelo	-	Public Arbitrator
Michael Bracchi	-	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.

Concurring Arbitrators' Signatures

Gerald Silverman

Gerald Silverman
Public Arbitrator, Presiding Chairperson

01/11/2022

Signature Date

Sue Ellen D'Arcangelo

Sue Ellen D'Arcangelo
Public Arbitrator

01/11/2022

Signature Date

Michael Bracchi

Michael Bracchi
Public Arbitrator

01/11/2022

Signature Date

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January 11, 2022

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