

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Michael Fillers Bolen

Case Number: 21-01154

vs.

Respondent

Wells Fargo Clearing Services, LLC

Hearing Site: Washington, D.C.

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 decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimant Michael Fillers Bolen: James P. Galvin, Esq., Galvin Legal, PLLC, Decatur, Georgia.

For Respondent Wells Fargo Clearing Services, LLC: Demian J. Betz, Esq., Wells Fargo & Company Legal Department, Charlotte, North Carolina.

CASE INFORMATION

Statement of Claim filed on or about: May 3, 2021.

Michael Fillers Bolen signed the Submission Agreement: May 3, 2021.

Statement of Answer filed by Respondent on or about: June 22, 2021.

Wells Fargo Clearing Services, LLC signed the Submission Agreement: June 22, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s expungement request and asserted various affirmative defenses with respect to any request for damages.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of the customer disputes at issue (Occurrence Numbers 1151235 and 1639219), and all such other and further relief as is just and equitable.

In the Statement of Answer, Respondent denied liability to Claimant for damages in any amount pursuant to any legal theory, and if further information became available as the matter progressed through discovery, Respondent reserved its rights to challenge Claimant's request for expungement relief and to otherwise assert all available defenses to the claim as necessary.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 22, 2021, Claimant advised that service of the Statement of Claim and notice of the date and time of the expungement hearing was sent via USPS Certified Mail to the customers in Occurrence Numbers 1151235 ("Customer A") and 1639219 ("Customer B"), hereinafter referred to collectively as the "Customers." On November 9, 2021, Claimant advised that USPS tracking indicated that service was successful on Customer A on October 23, 2021, but that service on Customer B appeared to have been unsuccessful. On November 28, 2021, Claimant advised that service on Customer B was returned as unsuccessful and that Claimant did not have any other addresses to make additional service attempts of Customer B. The Panel determined that Claimant made a reasonable effort to serve Customer B.

The Panel conducted a recorded, telephonic hearing on November 30, 2021, 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, took no position on the request for expungement.

The Customers did not participate in the expungement hearing. The Panel found that Customer A had notice of the expungement request and hearing, and that a reasonable effort was made to provide notice to Customer B of the expungement request and hearing.

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

The Panel noted that the disputes related to Occurrence Numbers 1151235 and 1639219 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim and exhibits, Respondent's Statement of Answer, Claimant's BrokerCheck® Report, and the testimony of Claimant.

AWARD

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

1. Claimant Michael Fillers Bolen's (CRD Number 2334043) request for expungement of Occurrence Number 1151235 from registration records maintained by the CRD is denied.
2. The Panel recommends the expungement of all references to Occurrence Number 1639219 from registration records maintained by the CRD for Claimant Michael Fillers Bolen (CRD Number 2334043) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael Fillers Bolen 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 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:

Customer B issued a complaint that he did not receive account statements and that unsuitable investments led him to lose a substantial amount of money. The Panel finds this claim to be both factually impossible and false. Customer B began his relationship with Claimant approximately in December of 1999, initially transferring in a substantial amount of money. Customer B feared that members of his family were stealing from him, and because he did not want them to know of his financial holdings, Customer B arranged for his account statements to be sent to Claimant's office. Customer B acknowledged this arrangement in writing (Exhibit 1 of Claimant's Statement of Claim). Customer B also acknowledged in writing that he would pick up the statements from Claimant's office (Exhibit 1 of Claimant's Statement of Claim). Therefore, the Panel finds the claim that Customer B did not receive account statements to be false.

Subsequently, Customer B voluntarily and without solicitation from Claimant withdrew a substantial amount from his account to fund investments and other cash needs outside of Respondent (Exhibit 2 of Claimant's Statement of Claim). Given the amount that Customer B voluntarily withdrew from his account in order to make investments elsewhere, it was impossible that he lost the amount claimed in the dot.com downturn. Therefore, the Panel finds that the claim is factually impossible, and the falsehood undermines its credibility.

Due to Customer B's large withdrawals, Respondent closed the account and transferred the remaining balance back to Customer B. It was not until almost ten (10) years later, and after

declaring bankruptcy, that Customer B sent a complaint to the U.S. Securities and Exchange Commission ("SEC"). Respondent investigated and rejected the claim. The lapse of time before making the claim undercuts its credibility and further supports the Panel's conclusion that it is false.

3. 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:

Expungement Filing Fee	= \$ 1,600.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$ 2,000.00
Member Process Fee	= \$ 3,850.00

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 @ \$1,150.00/session	= \$ 1,150.00
Pre-Hearing Conference: September 22, 2021 1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	= \$ 1,150.00
Hearing: November 30, 2021 1 session	

Total Hearing Session Fees	= \$ 2,300.00
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The Panel has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Christopher M. McMurray	-	Public Arbitrator, Presiding Chairperson
Richard P. Regan	-	Public Arbitrator
Ezio Borchini	-	Non-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

Christopher M. McMurray

Christopher M. McMurray
Public Arbitrator, Presiding Chairperson

12/09/2021

Signature Date

Richard P. Regan

Richard P. Regan
Public Arbitrator

12/08/2021

Signature Date

Ezio Borchini

Ezio Borchini
Non-Public Arbitrator

12/09/2021

Signature Date

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December 09, 2021

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