

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Robert George Funk

Case Number: 21-01904

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: New York, New York

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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

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Robert George Funk: James P. Galvin, Esq., Galvin Legal, PLLC, Decatur, Georgia.

For Respondent Merrill Lynch, Pierce, Fenner & Smith Inc.: W. Preston Martin, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: July 26, 2021.

Robert George Funk signed the Submission Agreement: July 26, 2021.

Statement of Answer filed by Respondent on or about: August 18, 2021.

Merrill Lynch, Pierce, Fenner & Smith Inc. signed the Submission Agreement: August 18, 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.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 802603 and 357569.

In the Statement of Answer, Respondent objected to any request for compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On December 10, 2021, Claimant advised that the customers in Occurrence Numbers 802603 and 357569 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Panel conducted a recorded hearing by videoconference on January 26, 2022, 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, did not oppose the request for expungement.

The customers in Occurrence Numbers 802603 and 357569 did not participate in the expungement hearing. The Panel found that the customers had notice 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 802603 and 357569 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: the pleadings; Claimant's testimony; Claimant's BrokerCheck® Report; and exhibits

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

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 Occurrence Number 802603 from registration records maintained by the CRD for Claimant Robert George Funk (CRD Number 2488055) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert George Funk 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; and the claim, allegation, or information is false.

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

The customer in Occurrence Number 802603 became a client in 1996. She had a moderate risk profile and was seeking income. Claimant recommended a bond fund, which she purchased. The near collapse of LTCM in 1998 caused an across-the-board decline in bond prices. At that time, Claimant was no longer with the firm and had no responsibility for the account. The customer complained to Respondent, which after investigation denied the complaint and no further action was taken by the customer. Also, the product recommended was suitable for the customer.

2. The Panel recommends the expungement of all references to Occurrence Number 357569 from registration records maintained by the CRD for Claimant Robert George Funk (CRD Number 2488055) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robert George Funk 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; and the claim, allegation, or information is false.

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

The customers in Occurrence Number 357569 were seeking aggressive growth. Claimant recommended an equity mutual fund which was subsequently purchased. After Claimant had left Respondent, the customers complained to the firm, alleging unsuitability and churning. The firm investigated the complaint and denied it. No further action was taken by the customers. Also, the product recommended was suitable for the customer.

## **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	=\$ 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 Arbitrators, 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 the Panel @ \$1,150.00/session	=\$ 1,150.00
Pre-Hearing Conference: November 16, 2021                      1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	=\$ 1,150.00
Hearing: January 26, 2022    1 session	

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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**

Robert E. Anderson	-	Public Arbitrator, Presiding Chairperson
Alexander B Rubin	-	Public Arbitrator
Abe I. Borenstein	-	Non-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**

**Robert E. Anderson**

Robert E. Anderson  
Public Arbitrator, Presiding Chairperson

**02/04/2022**

Signature Date

**Alexander B Rubin**

Alexander B Rubin  
Public Arbitrator

**02/04/2022**

Signature Date

**Abe I. Borenstein**

Abe I. Borenstein  
Non-Public Arbitrator

**02/04/2022**

Signature Date

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February 04, 2022

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