

Levine v Financial Ind. Regulatory Auth., Inc.
2018 NY Slip Op 32806(U)
October 26, 2018
Supreme Court, New York County
Docket Number: 654149/18
Judge: Lynn R. Kotler
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At IAS Part 8 of the Supreme Court of the State of New York, held in and for the County of New York, at the Supreme Court, 80 Centre Street, New York, New York, on the 26th day of October, 2018.

PRESENT:

HON. LYNN R. KOTLER
HON: _____ J.S.C.
JUSTICE.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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DAVID LOUIS LEVINE,

Petitioner,

v.

FINANCIAL INDUSTRY REGULATORY
AUTHORITY, INC. (FINRA),

Nominal Respondent.
----- X

Index No. 654149/18

DECISION AND ORDER

Petitioner David Louis Levine ("Petitioner"), by his attorneys, Bressler, Amery & Ross, P.C., has duly applied for an Order pursuant to CPLR § 7510 to confirm the arbitration panel's Award in an arbitration before the Financial Industry Regulatory Authority, Inc. ("FINRA"), captioned *David Louis Levine v. UBS Financial Services Inc.*, FINRA Dispute Resolution Arbitration No. 17-02798 (the "FINRA Arbitration").

Upon reading and filing the following papers submitted to the Court, including the Petition to Confirm an Arbitration Award Pursuant to CPLR §7510, the Affirmation of David I. Hantman, Esq., with exhibits A and B annexed thereto, which include a copy of the FINRA arbitration panel's Award (the "Award") recommending expungement of this matter from Mr. Levine's Central Registration Depository ("CRD") and FINRA's letter dated August 17, 2018, waiving the obligation under FINRA Rule 2080 to name FINRA as a party in this proceeding

and said application having regularly come on to be heard, and after due deliberation having been had thereon,

NOW, upon the application of Bressler, Amery & Ross, P.C., attorneys for Petitioner, it is hereby

ORDERED that the Petition is hereby granted ^{on default} solely to that portion of the arbitration panel's Award in the FINRA Arbitration recommending expungement, and is confirmed consistent with the below:

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

- I. The Arbitrator recommends the expungement of all references to occurrence numbers 1588001 and 1425875 from registration records maintained by the Central Registration Depository for Claimant David Louis Levine (CRD #2138119), with the understanding that, pursuant to Notice to Members 04-16, Claimant David Louis Levine must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directives.

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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

- The claim, allegation or information is factually impossible or clearly erroneous.
- II. The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Occurrence number 1588001

The customer alleged that he was advised that his Lehman Brothers issued investment was safe and that its risks were not disclosed by Claimant and Respondent UBS. The complaint arose from the substantial decline in the value of his investment as a result of the precipitous decline in the stock market in 2008. This fall in the market resulted in the collapse and eventual bankruptcy of Lehman Brothers in September 2008. The customer did not make a claim for damages. The complaint filed by the customer was investigated by Respondent UBS which found no sales practice violation by Claimant and no fault with his actions in this case. Respondent UBS subsequently settled the complaint with the customer with no participation or contribution by Claimant in the Settlement

Agreement. The Claimant provided credible oral testimony at the expungement hearing despite the limited availability of written evidence to support his case since the relevant corporate records were dated and had been destroyed in compliance with Respondent UBS's corporate policies. The customer was provided adequate notice of the expungement hearing and declined to participate. In the end Claimant's claim was uncontested by the customer, and Respondent UBS supported Claimant's request for expungement. Accordingly, the Arbitrator finds that the basis of the complaint was through no fault of Claimant and thus the claim, allegation, or information is factually impossible or clearly erroneous.

Occurrence number 1425875

The customer alleged misrepresentations and omissions in connection with the sale of a Lehman Brothers structured note and REIT. The complaint arose from the substantial decline in the value of his investment as a result of the precipitous decline in the stock market in 2008. This fall in the market resulted in the collapse and eventual bankruptcy of Lehman Brothers in September 2008. The complaint filed by the customer was investigated by Respondent UBS which found no sales practice violation by Claimant and no fault with his actions in this case. Respondent UBS subsequently settled the complaint with the customer with no participation or contribution by Claimant in the Settlement Agreement. The Claimant provided credible oral testimony at the expungement hearing despite the limited availability of written evidence to support his case since the relevant corporate records were dated and had been destroyed in compliance with Respondent UBS's corporate policies. The customer was provided adequate notice of the expungement hearing, and not only declined to participate in the hearing, but the written evidence indicates that she affirmatively offered to help Claimant "untarnish [his] name." Respondent UBS supported Claimant's request for expungement. Accordingly, the Arbitrator finds that the basis of the complaint was through no fault of Claimant and thus the claim, allegation, or information is factually impossible or clearly erroneous.

- III. The Arbitrator recommends the expungement of all references to occurrence number 1323772 from registration records maintained by the Central Registration Depository ("CRD") for Claimant David Louis Levine (CRD # 2138119), with the understanding that, pursuant to Notice to Members 04-16, Claimant David Louis Levine must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directives.

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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

- The registered person was not involved in the alleged investment related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

IV. The Arbitrator made the above Rule 2080 finding based on the following reasons:

The customer alleged that he was unaware of the surrender charges and tax liability of his annuity surrender in March 2003. The testimony at the hearing indicated that customer's decision to purchase and subsequently sell the annuity was made in consultation with another financial advisor with whom Claimant had no contact or involvement. Further, Claimant merely inherited the account briefly from the other financial advisor when the latter left the firm and eventually took the customer with him. The customer withdrew his complaint within a month of filing. The Claimant provided credible oral testimony at the expungement hearing despite the limited availability of written evidence to support his case since the relevant corporate records had been destroyed in compliance with Respondent Ameriprise's corporate policies. Respondent Ameriprise appeared at the expungement hearing and supported Claimant's expungement request. The Arbitrator concludes that the Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

V. The Arbitrator recommends the expungement of all references to occurrence numbers 1266020 and 1219209 from registration records maintained by the Central Registration Depository ("CRD") for Claimant David Louis Levine (CRD #2138119), with the understanding that, pursuant to Notice to Members 04-16, Claimant David Louis Levine must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directives.

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, the Arbitrator 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.

VI. The Arbitrator made the above Rule 2080 finding based on the following reasons:

Occurrence number 1266020

The customer alleged that she had been invested in unsuitable REIT investments in 2003 subjecting her to large surrender penalties to access the funds. Claimant testified that he sold the REIT investment to the customer which was suitable at

the time of sale, and which generated generous returns to the customer. However, the personal circumstances changed abruptly which required her to liquidate her REIT prematurely, three months prior to the one-year lock-up period specified in the REIT. This sale subjected her to payment of liquidation penalties. Claimant testified that he advised the client, both orally and in written disclosure documents upon purchase of the REIT, of the potential for liquidation penalties on premature sale. The complaint was denied by American Express and she declined to pursue arbitration or litigation thereafter. The Claimant provided credible oral testimony at the expungement hearing despite the limited availability of written evidence to support his case since the relevant corporate records were dated and had been destroyed in compliance with Respondent Ameriprise's corporate policies. The customer was provided adequate notice of the expungement hearing and declined to participate. In the end, Claimant's claim was uncontested by both the customer and Respondent Ameriprise. Indeed, Respondent Ameriprise supported Claimant's request for expungement. The Arbitrator concludes that: the claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

Occurrence number 1219209

The customers alleged that they lost money because their bond was not purchased at par value, as promised. Claimant provided credible testimony that the customers complaint arose from a misunderstanding of the Separately Managed Account that they had chosen, and the underlying coupon bonds that it contained. In the final analysis, their investment resulted in significant returns to them. The investment bonds were purchased in a managed account through a third-party money manager and not the Claimant, and so he was not involved in any sales practice violation as defined under FINRA Rule 2080(b)(1)(B). After their complaint was denied by American Express, the customers declined to pursue further litigation of their complaint. The customers were provided adequate notice of the expungement hearing and declined to participate. In the end, Claimant's claim was uncontested by both the customers and Respondent Ameriprise. Indeed, Respondent Ameriprise supported Claimant's request for expungement. The Arbitrator concludes that: the claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

VII. Any and all claims for relief not specifically addressed herein are denied.

ORDERED that the Award is confirmed and that all references to Occurrence Numbers 1219209, 1266020, 1323772, 1425875 and 1588001 be expunged from the FINRA CRD records of David Louis Levine (CRD# 2138119).

Enter,



HON. LYNN R. KOTLER
J.S.C.
J.S.C.