

**Merrill Lynch, Pierce, Fenner & Smith, Inc. v
Financial Indus. Regulatory Auth. Inc.**

2020 NY Slip Op 34137(U)

December 10, 2020

Supreme Court, New York County

Docket Number: 652932/2020

Judge: Carol R. Edmead

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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 solely to that portion of the Arbitrator'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:

1. The Arbitrator recommends the expungement of all references to the above-captioned arbitration:
 - a. occurrence number 2002305 from registration records maintained by the CRD, for Respondent Robert D. Norton (CRD# 5938954); and
 - b. occurrence number 2002352, from registration records maintained by the CRD, for unnamed party Dawn Elizabeth Cote (CRD# 2318074), with the understanding that, pursuant to Notice to Members 04-16, Respondent Robert D. Norton and unnamed party Dawn Elizabeth Cole (sic) 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.

Occurrence Number 2002305 for Norton

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

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

Occurrence Number 2002352 for Cote

Pursuant to Rule 12805 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.

The claim, allegation, or information is false.

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

For both Occurrence Numbers 2002305 and 2002352

Based upon the evidence presented at the hearing and in the Petition for Expungement, Claimant's claims and the allegations are not supported in any way by any of the admitted evidence in this matter. It is clearly impossible for Claimant to prove his original allegations against either Norton or Cote.

Occurrence Number 2002305 for Norton

In their initial discussions, Claimant met with Norton and was provided with suitable and appropriate investment information regarding investment at issue. The evidence presented clearly indicated that Norton spoke with Claimant for more than a year. They met four to five times in person. On at least two of these face-to-face meetings, Claimant was provided with written materials explaining the investment. Claimant had more than a year, and numerous opportunities, to raise any questions or concerns. Claimant stated that he understood the investment when he submitted his application and other ancillary paperwork. He also again responded affirmatively that he wanted to proceed just before he wired approximately \$580,000 to Merrill Lynch. Thus, the claims and allegations are factually impossible or clearly erroneous.

Occurrence Number 2002352 for Cote

In regards to Cote, the allegations of her failure to properly address the complaint are also factually impossible or clearly erroneous and false. As the involved supervisor, Cote received Claimant's complaint. As an experienced supervisor, Cote thoroughly investigated the complaint, using methods of due diligence in which she had been trained, and which she had exercised numerous times in the past. Once she concluded her own investigation, she forwarded the complaint to Merrill Lynch's corporate compliance department. The compliance department conducted its own independent investigation and arrived at the same conclusion as did Cote. That conclusion was that Norton followed all appropriate rules, policies, and procedures in his dealings with Claimant. Thus, the claims and allegations are factually impossible or clearly erroneous and false.

ORDERED that the Award is confirmed and that all references to Occurrence Number 2002305 be expunged from the FINRA CRD registration records of Robert D. Norton (CRD# 5938954), and that all references to Occurrence Number 2002352 be expunged from the FINRA CRD registration records of Dawn E. Cote (CRD# 2318074).

Enter,

, J.S.C.