

**Johnson v Merrill Lynch, Pierce,
Fenner & Smith, Inc.**

2020 NY Slip Op 34147(U)

December 14, 2020

Supreme Court, New York County

Docket Number: 656506/2020

Judge: Eileen A. Rakower

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This opinion is uncorrected and not selected for official publication.

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

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MARK JOHNSON,

Index No.: **656506/2020**

Petitioner,

ORDER AND JUDGEMENT

-against -

Motion Sequence 1

**MERRILL LYNCH, PIERCE, FENNER & SMITH,
 INC.**

Respondent.
 -----x

Hon. Eileen Rakower:

Petitioner Mark Johnson (“Petitioner”) has commenced this special proceeding for an Order pursuant to CPLR § 7510 confirming the arbitration award entered by the FINRA arbitrator dated December 16, 2019, in the case captioned *Johnson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 19-00799. Respondent has received notice and has not appeared in opposition to the action.

Upon reading the papers submitted to the Court, including the Petition, a copy of FINRA’s Arbitration Award and no opposition having been submitted, and after due deliberation having been had thereon,

NOW, upon the application of Petitioner, it is hereby:

ORDERED AND ADJUDGED that the Petition is granted without opposition and the arbitration award in *Johnson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 19-00799, is hereby confirmed consistent with the below:

After considering the pleadings, the testimony and evidence presented at the expungement 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 Occurrence Number 309049 from registration records maintained by the Central Registration Depository, for Claimant Mark E. Johnson (CRD # 1974661), with the understanding that, pursuant to Notice to Members 04-16, Claimant

Mark E. Johnson 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The Arbitrator found the Claimant credible. Claimant has had an almost 30 year stellar career as a Financial Advisor at Merrill Lynch, where he is currently a Senior Vice President and a Portfolio Investment Advisor, both of which are high positions. He has almost 200 million dollars in assets under management there and has a low velocity, which indicates that he does not excessively buy and sell.

Merrill Lynch has a comprehensive structure designed to ensure that the financial advisors get to know their customers and that the clients are fully informed of the risks.

Merrill Lynch also has a comprehensive structure of investigating complaints; it investigated this complaint and found it to be false and the customer did not lose any money.

The account was non-discretionary and there was no allegation that the customer did not approve the trades. A lawyer wrote the complaint but dropped it upon receiving Respondent's response.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 368213 from registration records maintained by the Central Registration Depository, for Claimant Mark E. Johnson (CRD # 1974661), with the understanding that, pursuant to Notice to Members 04-16, Claimant

Mark E. Johnson 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The Arbitrator found the Claimant credible. Claimant has had an almost 30 year stellar career as a Financial Advisor at Merrill Lynch, where he is currently a Senior Vice President and a Portfolio Investment Advisor, both of which are high positions. He has almost 200 million dollars in assets under management there and has a low velocity, which indicates that he does not excessively buy and sell.

Merrill Lynch has a comprehensive structure designed to ensure that the financial advisors get to know their customers and that the clients are fully informed of the risks. Merrill Lynch also has a comprehensive structure of investigating complaints; it investigated this complaint and found it to be false and the customer did not lose any money.

Merrill Lynch does not allow anyone to trade on margin without authorizing it in writing, so the Arbitrator believes that the customer's allegation to the contrary is false.

The account was non-discretionary and there was no allegation that the customer did not approve the trades. Upon Merrill Lynch paying the customer a small amount of money, the customer dropped the complaint.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: December 14, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION