

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
James William McLellan

Case Number: 18-03098

vs.

Respondents
Leonard & Company, Broad Street Securities, Inc.,
and Newbridge Securities Corporation

Hearing Site: Detroit, Michigan

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant James William McLellan ("Claimant"): Frances Menzer, Esq., HLBS Law, Westminster, Colorado.

Respondent Leonard & Company ("Leonard") did not appear.

Respondent Broad Street Securities, Inc. ("Broad Street") did not appear.

For Respondent Newbridge Securities Corporation ("Newbridge"): Gregg J. Breitbart, Esq., Kaufman Dolowich & Voluck, LLP, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 30, 2018.
Claimant signed the Submission Agreement: August 30, 2018.

Leonard did not file a Statement of Answer or sign a Submission Agreement.

Broad Street did not file a Statement of Answer or sign a Submission Agreement.

Statement of Answer filed by Newbridge on or about: December 3, 2018.
Newbridge signed the Submission Agreement: November 30, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of six customer complaints from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Newbridge denied any liability to Claimant but did not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1208937, 1208938, 1214949, 1270992, 1288921, and 1588547 from his CRD records and an award of compensatory damages in the amount of \$1.00.

In the Statement of Answer, Newbridge requested that all FINRA processing and forum fees be assessed against Claimant.

At the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

Leonard and Broad Street did not file with FINRA Office of Dispute Resolution properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure.

On or about March 12, 2019, Claimant filed an affidavit attesting that his counsel ("Counsel") had located and served one of the customers related to Occurrence Number 1208938 ("T.M."), however, Counsel was unable to narrow the search parameters to locate any information as to the customers related to Occurrence Numbers 1208937, 1214949, 1270992, 1288921, and 1588547. Claimant also filed a copy of the letter sent to T.M., providing notice of the expungement hearing date and time, notice of the option to participate in the telephonic expungement hearing, a copy of the Statement of Claim, and Proof of Service for those documents. Claimant further filed a Death Record and obituary for the other customer related to Occurrence Number 1208938.

On or about April 1, 2019, Claimant filed a letter stating that he was unable to obtain a copy of the settlement agreements relating to Occurrence Numbers 1270992 and 1288921. Claimant further stated that he was not a party to the agreements between the underlying customers and Leonard, was never provided copies, and was unable to serve anyone with discovery requesting those agreements.

The Arbitrator conducted a recorded, telephonic hearing on April 4, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

None of Respondents and none of the customers participated in the expungement hearing.

Based on the representations of Claimant's counsel, the Arbitrator determined that, due to the length of time that had passed and the firms (where Claimant was formerly employed) being out of business, the efforts to find and serve the customers related to Occurrence

Numbers 1208937, 1214949, 1270992, 1288921, and 1588547 were sufficient and the hearing would proceed.

The Arbitrator reviewed the BrokerCheck® Report for Claimant. Based on the BrokerCheck® Report and the testimony and representations of Claimant, the Arbitrator noted that there were no settlement documents to review in Occurrence Numbers 1270992 and 1288921. The Arbitrator also noted that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the underlying complaints in Occurrence Numbers 1208937, 1208938, 1214949, and 1588547 did not result in settlement agreements.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the BrokerCheck® Report for Claimant; Claimant's testimony, including testimony regarding market performance during the applicable time period; and exhibits submitted.

AWARD

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

The Arbitrator recommends the expungement of all references to the Occurrence Numbers 1208937, 1208938, 1214949, 1270992, 1288921, and 1588547 from registration records maintained by the CRD, for Claimant James William McLellan (CRD# 706853), with the understanding that, pursuant to Notice to Members 04-16, Claimant James William McLellan 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:

Occurrence Number 1208937

The customer purchased an annuity. Its value fell and several years later, the customer asked the insurance issuer to waive the surrender charges,

which request was denied. The customer took no further action. The customer's allegation that Claimant misrepresented the surrender fees is false. Claimant reviewed the financial charges for the investment with the customer. The customer received extensive written information about the investment including the prospectus and information about the surrender charges and the requisite time line of holding the investment to eliminate such charge.

Occurrence Number 1208938

The customers alleged that management fees were not properly disclosed at the time they purchased a variable tax-deferred annuity. The allegation is false. Claimant testified he reviewed all charges and fees with the customers at the time of purchase. Written documentation provided to the customers included information about the underlying investments, investment risks, and fees. When the customers complained to Leonard, an investigation ensued and Leonard determined the customers made an informed investment decision. The customers took no further action.

Occurrence Number 1214949

The customer was unwilling to divest some of his substantial investment in his former employer which the customer purchased prior to his relationship with Claimant, notwithstanding Claimant's multiple recommendations to diversify a portion of the investment. Separately, Claimant recommended an investment in a certain fund which had substantial exposure in "tech stocks", which was appropriate based on the customer's investment objectives and risk tolerance. The fund initially performed well, but when the "tech bubble" burst, the customer complained about the loss in value, claimed it was not a suitable investment, and further blamed Claimant for the loss in value of his portfolio. The allegation is false. Claimant had frequent interactions with the customer and they selected the fund together. The customer followed the investment very closely. The customer's losses were due to a decline in the market and the customer's failure to diversity his portfolio despite Claimant's recommendation to do so. Leonard investigated the complaint and Claimant was not involved in the investigation. No further action was taken by the customer nor by Leonard.

Occurrence Number 1270992

The customers sought out tax-deferred growth investments. They elected to purchase an annuity, which initially performed well. After consulting with their CPA and Claimant, the customers elected to liquidate the investment, resulting in a large loss, but generating significant tax savings to the customers. The customers later regretted their decision and complained to Leonard, alleging misrepresentation and churning. The allegation is false. Claimant reviewed the investment benefits and risks with the customers at

the time of acquisition. The customers acted on the recommendation of their CPA to liquidate the investment. There was no evidence of churning.

Occurrence Number 1588547

The customer complained of misrepresentation by Claimant related to fees associated with the purchase of a variable annuity. The allegation is false. The customer was provided with extensive written documentation regarding fees and expenses associated with the investment. Documentation was presented associated with the purchase and subsequent sale relating to the State of Michigan's investigation which denied the customer's claims.

Occurrence Number 1288921

The customer complained of misrepresentation, breach of fiduciary duty, and failure to disclose surrender fees. The customer's claim is false. The customer was a well-educated and sophisticated investor and an attorney at law. He was specifically seeking tax-deferred growth. He received and reviewed substantial written information regarding the annuity he subsequently purchased. He spoke with Claimant two or three times per month. As market performance declined, the customer sought tax savings strategies and liquidated the investment at a loss to gain tax savings. The customer's CPA was involved in the strategy and ultimate decision. By the time of the customer's complaint, Claimant had departed Leonard and was affiliated with Broad Street. Claimant was not part of any of the investigation of the complaint by Leonard. Claimant subsequently learned that the matter was settled without notice to, or contribution by, Claimant.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Office of Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 50.00

**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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Newbridge, Leonard, and Broad Street are each assessed the following:

Member Surcharge = \$ 150.00

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$50.00/session		= \$ 50.00
Pre-hearing conference: March 6, 2019	1 session	

One (1) hearing session @ \$50.00/session		= \$ 50.00
Hearing Date: April 4, 2019	1 session	

Total Hearing Session Fees		= \$ 100.00
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The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Tracy L. Allen

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Sole 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.

Arbitrator's Signature



Tracy L. Allen
Sole Public Arbitrator



Signature Date

May 23, 2019

Date of Service (For FINRA Office of Dispute Resolution office use only)