

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C.**

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In the Matter of the Application Of  
Cynthia Mary Couyoumjian  
For Review of Action Taken By  
FINRA  
File No. 3-20154

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**MS. COUYOUMJIAN’S BRIEF IN SUPPORT OF APPLICATION FOR REVIEW**

**INTRODUCTION**

Ms. Cynthia Mary Couyoumjian (“Ms. Couyoumjian”) seeks Commission review of a determination by the Director of FINRA Office of Dispute Resolution (“Director”) to deny Ms. Couyoumjian access to the Financial Industry Regulatory Authority, Inc. (“FINRA”) arbitration forum, under FINRA Code of Arbitration Procedure for Industry Disputes (“FINRA Rules”) Rules 12203(a) or 13203(a). Ms. Couyoumjian, by and through counsel, timely submitted an Application for Review to the Commission, pursuant to Section 19(d) of the Securities Exchange Act of 1934 (the “Exchange Act”)<sup>1</sup>, challenging the Director’s determination that Ms. Couyoumjian’s claim is ineligible for arbitration in FINRA’s Dispute Resolution Forum (“FINRA’s Forum”).

**FACTUAL BACKGROUND**

1. FINRA is a not-for-profit Delaware corporation and self-regulatory organization (“SRO”) registered with the U.S. Securities and Exchange Commission (the “SEC” or

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<sup>1</sup> 15 U.S.C. § 78s(d).

“Commission”) as a national securities association. FINRA, through its subsidiary, FINRA Regulation, Inc., has established the FINRA Office of Dispute Resolution, which carries out the sole function of operating an arbitration and mediation forum to resolve securities industry disputes. The Office of Dispute Resolution’s authority is limited to administration of the forum, not regulatory policy decisions.

2. FINRA maintains an electronic database called the Central Registration Depository (“CRD”) and a public reporting system known as BrokerCheck.<sup>2</sup> This online, publicly marketed reporting system includes the wide-spread disclosure of customer complaints against each Associated Person of a FINRA member firm. The purpose of the CRD and BrokerCheck systems are to: (1) to create a regulatory system for financial advisors to improve overall regulation of advisors, (2) to make information about financial advisors available to the public, and (3) to provide financial advisors an efficient automated filing system. FINRA requires member firms to report all customer complaints that meet specific requirements to FINRA, and publicly discloses these complaints, absent any determination of merit or factual basis. As discussed below, FINRA provides only one viable remedy for almost all Associated Persons to remove false or misreported customer complaints: expungement requests, pursuant to FINRA Rule 2080.

3. Ms. Couyoumjian (CRD #1456630) is a resident of Tustin, California. She has been a financial services professional since February of 1986. Ms. Couyoumjian is a registered representative with FINRA and an investment advisor representative registered with the SEC. Ms. Couyoumjian is currently registered with Independent Financial Group, LLC in Tustin, California.

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<sup>2</sup> 15 U.S.C. 78o-3(i)(1).

## PROCEDURAL HISTORY

4. On December 26, 2018, Ms. Couyoumjian filed a Statement of Claim in FINRA’s Forum against Respondents LPL Financial LLC (“LPL”) and First Allied Securities, Inc. (“FAI”) seeking expungement of customer dispute disclosures<sup>3</sup> published on her CRD and BrokerCheck records pursuant to FINRA Rule 2080<sup>4</sup>.

5. On February 10, 2020, the Chairperson issued an award (“Award”) denying Ms. Couyoumjian’s request for expungement.

6. On May 7, 2020, Ms. Couyoumjian filed a Petition to Vacate Arbitration Award with the District Court Broomfield County, Colorado<sup>5</sup> seeking to vacate the Award.

7. On July 15, 2010, the District Court Judge granted Ms. Couyoumjian’s requested relief and ordered the arbitration Award issued in FINRA Case No. 18-04362 be vacated.

8. On October 23, 2020, Ms. Couyoumjian refiled her Statement of Claim in FINRA’s Forum seeking expungement of the Occurrences pursuant to FINRA Rule 2080 and consistent with the District Court Judge’s ruling.

9. On October 29, 2020, counsel for Ms. Couyoumjian received notice that FINRA denied Ms. Couyoumjian access to FINRA’s arbitration forum (“Denial Notice”). The Denial Notice was issued by Cheryl S. Abuan, a Senior Case Specialist (“Case Specialist”) with FINRA, stating that “FINRA has determined that the claims you have alleged in your statement of claim are not eligible for arbitration” and that “pursuant to the Customer Code Rule 12203(a) or Industry Code Rule 13203(a), we decline to accept your claim.” *See*, attached **Exhibit A**.

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<sup>3</sup> Ms. Couyoumjian sought expungement of the following customer dispute disclosures, occurrence numbers: 1430787, 1435132, 1620763, 1666365, 1704529, 1705398, 1715616, and 1749030 (together, the “Occurrences”).

<sup>4</sup> This case was assigned FINRA Case No. 18-04362.

<sup>5</sup> This action was assigned Case No. 2020CV30148.

10. On November 19, 2020, Ms. Couyoumjian timely filed her Application for Review of FINRA’s denial of forum.

11. On December 23, 2020, the Commission sent its briefing schedule indicating that Ms. Couyoumjian’s brief in support of the application for review is due on January 22, 2021, the brief in opposition is due on February 4, 2021, and any reply brief is due February 22, 2021.

12. On January 19, 2021, Ms. Couyoumjian submitted an Unopposed Motion for Extension of Time to extend the briefing schedule.

13. On January 21, 2021, the Commission issued an Extension Order, granting Ms. Couyoumjian’s requested extension, with the following new deadlines: Ms. Couyoumjian’s brief in support of the application for review is now due on February 5, 2021, the brief in opposition is now due on March 8, 2021, and any reply brief is now due March 22, 2021.

14. Ms. Couyoumjian hereby timely submits her brief in support of the application for review.

### **JURISDICTION**

15. The Commission has jurisdiction to hear this Application for Review pursuant to Section 19(d) of the Securities Exchange Act of 1934.<sup>6</sup>

### **LEGAL ANALYSIS**

**A. FINRA’s prohibition of Ms. Couyoumjian’s request to be heard in the FINRA Forum is not consistent with either FINRA rules or fundamental notions of due process.**

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<sup>6</sup> See, *Consolidated Arbitration Applications, Exchange Act Release No. 89495*, 2019 WL 6287506 (August 6, 2020) (Commission finds jurisdiction to hear claims where FINRA prohibited applicants’ access to its arbitration forum to seek expungement because “FINRA’s service of providing arbitration of expungement claims is ‘fundamentally important’ and central to its function as an SRO.”).

16. FINRA made a determination that Ms. Couyoumjian's claim is "not eligible" for FINRA arbitration pursuant to FINRA Rule 12203(a) or 13203(a), and prohibited Ms. Couyoumjian access to the FINRA Forum.

17. FINRA Rules 12203 and 13203 are located in FINRA's Code of Arbitration for Customer Disputes and the Code of Arbitration for Industry Disputes respectively.<sup>7</sup> Rule 13203(a) states that:

The Director may decline to permit the use of the FINRA arbitration forum if the Director determines that, given the purposes of FINRA and the intent of the Code, the subject matter of the dispute is inappropriate, or that accepting the matter would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives. Only the Director may exercise the authority under this Rule.

18. As a preliminary matter, it is important to note that the Denial Notice was issued by a FINRA "Case Specialist," and not by the Director. The Denial Notice does not mention the Director as having made any direct decision, and simply alleges it was a "FINRA" decision. Therefore, the Denial Notice does not comply with Rule 13203 as there is no evidence the Director made the determination at issue here.

19. Further, the Denial Notice does not align with the required standard of a determination that the "subject matter" is "inappropriate" "given the purposes of FINRA and the intent of the Code." FINRA does not appear to have made a determination at any point that the expungement request at issue "would pose a risk to the health or safety of arbitrators, staff, or parties or their representatives." *See*, FINRA Rule 13203. The Denial Notice simply states that the expungement request is "not eligible" without any stated grounds. The Exchange Act explicitly states that "a determination by the association to...prohibit or limit a person with respect to access

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<sup>7</sup> The language of FINRA Rules 12203 and 13203 are identical and will be herein referred to as "Rule 13203" for purposes of simplicity.

to services offered by the association or a member thereof shall be supported by a statement setting forth the specific grounds on which the...prohibition or limitation is based.” 15 U.S.C.A. § 78o-3(h)(2) (emphasis added). FINRA provided no such statement and has failed to comply with its obligations of providing a statement setting forth the grounds on which the limitation is based pursuant to the Exchange Act. Therefore, Ms. Couyoumjian is unaware of the reasoning behind FINRA’s determination that her claims are ineligible for arbitration.

20. If FINRA denied Ms. Couyoumjian access to FINRA’s Forum based solely on the fact that she received an award denying expungement that was subsequently *vacated*, such a determination is inconsistent with the law and notions of justice. Following an arbitration, a party has a right to seek vacatur of the award. *See*, 9 U.S.C. §§ 9, 10. An arbitration award that is subsequently vacated is rendered invalid and is not binding on anyone. *See*, *Lindland v. U.S. Wrestling Ass’n, Inc.*, 227 F.3d 1000, 1005 (7th Cir. 2000); *see also*, *Close v. Motorists Mut. Ins. Co.*, 21 Ohio App. 3d 228, 231, 486 N.E.2d 1275, 1279 (1985) (holding that “[t]he vacation of an arbitration award on procedural grounds leaves the parties as they were at the beginning of the process, and they are each entitled to begin anew.”). Here, Ms. Couyoumjian exercised her right to seek vacatur of the arbitration award that was rendered in FINRA Case No. 18-04362. A District Court Judge granted Ms. Couyoumjian’s request for vacatur of that award, which entitled Ms. Couyoumjian to begin anew with her expungement request. Ms. Couyoumjian then rightly sought to refile her expungement request in FINRA’s Forum, when FINRA denied her access to its forum without any valid basis.

21. Additionally, if FINRA did deny Ms. Couyoumjian access to FINRA’s Forum based solely on the fact that she vacated the arbitration award, such a determination is also

inconsistent with the purpose and intent of Rule 13203.<sup>8</sup> FINRA has, pursuant to its rulemaking procedures, adopted Rules and issued guidance on expungement procedure.<sup>9</sup> None of the adopted rules and guidance state that an application for expungement will be barred or ineligible for arbitration if the claimant obtains an order vacating the original arbitration award. The creation of such a rule by FINRA would effectively render any vacatur order useless and also bypasses the rulemaking procedures adopted by FINRA and codified in FINRA Rule 0110 that requires public notice and SEC approval for any new rules or rule changes.<sup>10</sup>

22. Assuming, for the sake of argument, that FINRA has the authority to make and implement such a rule, the *de facto* nature of it violates fundamental due process standards. In 1971, the U.S. Supreme Court heard a case involving a Wisconsin statute that allowed “designated persons” to post notices forbidding the sale or gift of liquor to persons who, because of excessive drinking, failed to provide for his or her family or threatened the peace of the community.<sup>11</sup> In deeming the statute unconstitutional, the Court stated that:

It would be naive not to recognize that such ‘posting’ or characterization of an individual will expose him to public embarrassment and ridicule, and it is our opinion that procedural due process requires that before one acting pursuant to State statute can make such a quasi-judicial determination, the individual involved must be given notice of the intent to post and an opportunity to present his side of the matter.<sup>12</sup>

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<sup>8</sup> The purpose of providing the FINRA Director with this authority under Rule 13203 was to “give the Director the flexibility needed in *emergency* situations” and to “address circumstances that may require immediate resolution, such as security concerns and other unusual but serious situations.” 72 Fed. Reg. 20 at 4580-4601 (2007) (emphasis added). “[T]his authority, *which cannot be delegated* by the Director... should be limited by application in *only a very narrow range of unusual circumstances*.” *Id.* at 4602. (emphasis added).

<sup>9</sup> See, e.g., FINRA Rules 2080 and 13805; see also, <https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance>.

<sup>10</sup> See FINRA Rulemaking Process <https://www.finra.org/rules-guidance/rulemaking-process>.

<sup>11</sup> *Wisconsin v. Constantineau*, 400 U.S. 433, 434 (U.S. 1971).

<sup>12</sup> *Id.* at 436.

23. Since 1971, federal courts have upheld that “where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.”<sup>13</sup> In 1994, the 2<sup>nd</sup> Circuit Court of Appeals held that New York State’s maintenance of a Central Register that identifies individuals accused of child abuse or neglect, and its communication of the names of those on the list to potential employers implicated a protectible liberty interest under the Fourteenth Amendment.<sup>14</sup>

24. While the constitutionality of FINRA’s publication of customer disputes and other disclosures is not an issue before the Commission, having publicly-available disclosures that broadcast allegations of securities practice violations is equated to being a con artist, an unscrupulous financial professional, or a disreputable person. Ms. Couyoumjian’s disclosures call into question her good name, reputation, honor, and integrity. Further, FINRA Rule 3110 requires member firms to review and consider an investment advisor’s CRD when making hiring, retention, and advancement decisions.<sup>15</sup> The disclosures have a tangible effect on Ms. Couyoumjian’s pursuit of her chosen profession. Ms. Couyoumjian has the right to an evidentiary hearing to determine whether her disclosures should be expunged<sup>16</sup>; a right that FINRA has denied Ms. Couyoumjian access to in violation of the Exchange Act.

**B. FINRA’s prohibition of Ms. Couyoumjian’s request to be heard in the FINRA Forum is an inconsistent application of FINRA Rule 13203.**

25. Again, Ms. Couyoumjian has no knowledge as to the basis for FINRA’s denial of forum, since FINRA did not provide Ms. Couyoumjian with its stated grounds or an opportunity

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<sup>13</sup> See, e.g. *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 573, 92 S. Ct. 2701, 2707, 33 L. Ed. 2d 548 (1972).

<sup>14</sup> *Valmonte v. Bane*, 18 F.3d 992, 994 (2d Cir. 1994).

<sup>15</sup> See, e.g., FINRA Rule 3110(e).

<sup>16</sup> See, FINRA Rules 13805 and 2080.

to be heard on the matter. But if FINRA did deny forum based on the vacated award, such a determination by FINRA would be an inconsistent, arbitrary, and inappropriate application of FINRA Rule 13203 and would be in excess of its authority under the Exchange Act. Upon a cursory search, there are countless cases where a party to a FINRA arbitration was denied their requested relief, sought vacatur and succeeded, and then FINRA allowed their claims to be refiled in FINRA's arbitration forum and proceed to the merits of their case.

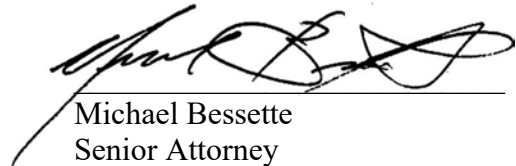
26. For example, in *Ling Yung Wu v. J.P. Morgan Securities, LLC*, FINRA Case No. 18-02825, Claimant Wu sought expungement of a customer dispute disclosure from her CRD record in FINRA's arbitration forum. *See*, attached **Exhibit B**. After a hearing on the merits, an award was issued denying Wu's request for expungement. *Id.* Wu subsequently filed a motion to vacate the award, which was granted. *Id.* Wu then refiled her claim in FINRA's arbitration forum, and FINRA allowed the expungement request to proceed to another hearing on the merits where Wu's expungement request was granted by a different arbitration panel. *Id.* FINRA did not deny Wu access to its arbitration forum. Wu has since successfully expunged that customer dispute disclosure from her record. The case here is identical to the case in Wu. The *Wu* case is not the only case where FINRA has allowed vacated awards to proceed back through FINRA's arbitration forum either. *See, e.g.*, attached **Exhibits C, D, and E**. It is clear that FINRA allows parties to its arbitration forum to refile their claims after successfully obtaining vacatur relief, including requests for expungement relief. FINRA has wrongfully singled out Ms. Couyoumjian and prohibited her access to a fundamentally important service that is central to its function as an SRO.

## CONCLUSION

27. The Commission is required to review an action of a SRO if the action is final, prohibits or limits a person's access to services offered to any person by the SRO, and an application by an aggrieved party is timely filed. Ms. Couyoumjian is an Associated Person, who is not only provided access to the service of FINRA arbitration forum, but is required to file all claims within the forum pursuant to FINRA Rule 13200. FINRA's decision to deny Ms. Couyoumjian's access to its arbitration forum is a final action by FINRA, which prohibits Ms. Couyoumjian's access to the service of FINRA arbitration, limits her access to request any relief at all, and her application for review was filed with the Commission within 30 days of receiving the Denial Notice from FINRA. Therefore, Ms. Couyoumjian respectfully requests an order allowing Ms. Couyoumjian to bring her expungement claim through FINRA's arbitration forum.

Dated: February 5, 2021

Respectfully submitted,



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HLBS Law  
9737 Wadsworth Pkwy, Ste. G-100  
Westminster, CO 80021

**CERTIFICATE OF SERVICE**

I, James Bellamy certify that on this 5th day of February 2021, caused a copy of Applicant's Brief in Support of Application for Review above, to be served by email on:

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F St., NE  
Washington, DC 20549-1090  
[apfilings@sec.gov](mailto:apfilings@sec.gov)

Megan Rauch  
[megan.rauch@finra.org](mailto:megan.rauch@finra.org)

Alan Lawhead  
[alan.lawhead@finra.org](mailto:alan.lawhead@finra.org)  
[nac.casefilings@finra.org](mailto:nac.casefilings@finra.org)  
Office of General Counsel FINRA  
1735 K Street, NW Washington, D.C. 20006

**[X] (BY EMAIL)** I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**[X] (STATE)** I certify (or declare) under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

/s/James Bellamy  
James Bellamy  
9737 Wadsworth Pkwy Suite G-100  
Westminster, CO 80021

# EXHIBIT A



**TO:** Michael Bessette, Esq.

**From:** Cheryl S Abuan  
Senior Case Specialist

**Subject:** FINRA Dispute Resolution Services Arbitration Number 20-03613  
Cynthia Mary Couyoumjian vs. LPL Financial LLC and First Allied Securities, Inc.

**Date:** October 29, 2020

FINRA has determined that the claims you have alleged in your statement of claim are not eligible for arbitration. Therefore, pursuant to the Customer Code Rule 12203(a) or Industry Code Rule 13203(a), we decline to accept your claim.

Accordingly, we closed this case without prejudice and processed a refund of your filing fees. Refunds will be sent under separate cover.

If you have any questions, please do not hesitate to contact me at 213-613-2664 or by email at Cheryl.Abuan@finra.org.

CSA:csa:LC53W  
idr: 04/30/2020

RECIPIENTS:  
Michael Bessette, Esq., HLBS Law, 9737 Wadsworth Parkway, Suite G-100, Westminster, CO  
80021  
On Behalf Of: Cynthia Mary Couyoumjian

# EXHIBIT B

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Ling Yung Wu

Case Number: 18-02825

vs.

Respondent  
J.P. Morgan Securities, LLC

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Ling Yung Wu: Thomas Cahill, Esq., Satterlee Stephens LLP, New York, New York.

For Respondent J.P. Morgan Securities, LLC: Scott R. Koch, Esq., JPMorgan Chase Legal Department, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: August 10, 2018.  
Amended Statement of Claim filed on or about: June 3, 2019.  
Claimant signed the Submission Agreement: August 8, 2018.

Statement of Answer filed by Respondent on or about: October 1, 2018  
Statement of Answer to the Amended Statement of Claim filed by Respondent on or about: October 11, 2019.  
Respondent signed the Submission Agreement: October 1, 2018.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer and Amended Statement of Answer, Respondent denied any wrongdoing.

**RELIEF REQUESTED**

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of occurrence #1717500, and such other and further relief as the Panel finds just and proper.

In the Statement of Answer and Amended Statement of Answer, Respondent did not oppose Claimant's expungement request.

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

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

On January 10, 2019, an award was issued in the above referenced matter. Claimant subsequently filed a Motion to Vacate the Award. By Order dated April 24, 2019, the Supreme Court of the State of New York, New York County, granted Claimant's Motion to Vacate.

By correspondence dated June 12, 2019, the parties requested that this case proceed with three arbitrators pursuant to FINRA Rule 12401(c) of the Code of Arbitration Procedure.

On October 8, 2019, Claimant notified the customer in the underlying complaint of her request for expungement and of his right to participate in the expungement hearing and also provided the customer with a copy of the Statement of Claim.

The Panel conducted a recorded in-person hearing on October 28, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

The customer in the underlying complaint did not participate in the expungement hearing and did not contest Claimant's request for expungement.

The Panel finds that the customer does not desire to participate in the expungement hearing and that a decision on the merits of Claimant's request can be entered.

The Panel reviewed the BrokerCheck® Report for Claimant.

The Panel noted that Claimant did not previously file a claim requesting expungement of occurrence number 1717500.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's testimony, the customer transaction form, internal emails indicating that Claimant followed supervisory procedures, and Respondent's Compliance Department's response to the customer's complaint.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the 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 the above-captioned arbitration from registration records maintained by the Central Registration Depository ("CRD"), for Claimant Ling Yung Wu (CRD# 4211526), with the understanding that, pursuant to Notice to Members 04-16, Claimant Ling Yung Wu 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 Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

The customer's allegation is clearly erroneous in that the documentary record and testimony established that Claimant acted promptly and in compliance with her firm's supervisory procedures.

The Claimant had no involvement in the underlying transactions at issue nor was she the relevant sales supervisor.

The claim of inadequate supervision is refuted by the documentary evidence and testimony and the Claimant was not responsible for sales supervision.

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

### **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	= \$ 1,575.00
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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 J.P. Morgan Securities, LLC is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

**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, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ 1,125.00/session	= \$1,125.00
Pre-hearing conference: August 29, 2019 1 session	
One (1) hearing session on expungement request with the Panel	
@ \$1,125.00/session	= \$1,125.00
Hearing Date: October 28, 2019 1 session	

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Total Hearing Session Fees	= \$2,250.00
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The Panel has assessed the hearing session fees of \$2,250.00 to Claimant.

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

**ARBITRATION PANEL**

Karimu F. Hill-Harvey	-	Public Arbitrator, Presiding Chairperson
Dan Brecher	-	Public Arbitrator
Norman Feit	-	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**

***Karimu F. Hill-Harvey***

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Karimu F. Hill-Harvey  
Public Arbitrator, Presiding Chairperson

11/13/2019

\_\_\_\_\_  
Signature Date

***Dan Brecher***

\_\_\_\_\_  
Dan Brecher  
Public Arbitrator

11/12/2019

\_\_\_\_\_  
Signature Date

***Norman Feit***

\_\_\_\_\_  
Norman Feit  
Non-Public Arbitrator

11/12/2019

\_\_\_\_\_  
Signature Date

November 13, 2019

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

# EXHIBIT C

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Mary Millman

Case Number: 17-00043

vs.

Respondents  
Ankit Sahu  
UBS Financial Services Inc.

Hearing Site: San Francisco, California

Cross-Claimant  
Ankit Sahu

vs.

Cross-Respondent  
UBS Financial Services Inc.

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Nature of the Dispute: Customer vs. Member and Associated Person

Associated Person vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

Claimant Mary Millman (“Claimant”) appeared pro se.

For Respondent/Cross-Claimant Ankit Sahu (“Sahu”) and Respondent/Cross-Respondent UBS Financial Services Inc. (“UBS”): Philip A. McLeod, Esq., Keesal, Young & Logan, San Francisco, California.

Hereinafter, Sahu and UBS are collectively referred to as “Respondents.”

**CASE INFORMATION**

Statement of Claim filed by Claimant on or about: January 3, 2017.

First Amended Statement of Claim filed by Claimant on or about: August 14, 2017.

Claimant signed the Submission Agreement: January 3, 2017.

Statement of Answer to Claimant’s Statement of Claim filed by UBS on or about: May 2, 2017.

Statement of Answer to Claimant's Statement of Claim filed by Sahu on or about: May 2, 2017.

Statement of Answer to Claimant's First Amended Statement of Claim filed by UBS on or about: September 13, 2017.

Statement of Answer to Claimant's First Amended Statement of Claim filed by Sahu on or about: September 13, 2017.

Cross-Claim against UBS filed by Sahu on or about: May 2, 2017.

Statement of Answer to Sahu's Cross-Claim filed by UBS on or about: May 22, 2017.

UBS signed the Submission Agreement: January 11, 2017.

Sahu signed the Submission Agreement: May 2, 2017.

### **CASE SUMMARY**

Claimant asserted the following causes of action: negligence; unsuitability; fraud; breach of fiduciary duty; breach of contract; failure to supervise/control person liability; respondeat superior; California Civil Code Section 3372; and California Welfare & Institutions Code. The causes of action relate to a real estate loan on a Mississippi property ("Mississippi Investment") and Sahu's alleged mismanagement of Claimant's brokerage account, including investments in unspecified securities while employed by UBS.

Unless specifically admitted in the Statement of Answer to Claimant's Statement of Claim, UBS denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer to Claimant's Statement of Claim, Sahu denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the First Amended Statement of Claim, Claimant added the following causes of action: unauthorized trading; and California Civil Code Section 3345. Claimant also added additional argument regarding the California Welfare & Institutions Code cause of action and updated her relief request to include treble damages under California Civil Code Section 3345.

Unless specifically admitted in the Statement of Answer to Claimant's First Amended Statement of Claim, UBS denied the allegations made in the First Amended Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer to Claimant's First Amended Statement of Claim, Sahu denied the allegations made in the First Amended Statement of Claim and asserted various affirmative defenses.

In the Cross-Claim, Sahu asserted a claim for indemnification against UBS with respect to the claims regarding the Mississippi Investment.

Unless specifically admitted in the Statement of Answer to Sahu's Cross-Claim, UBS denied the allegations made in the Cross-Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim and the First Amended Statement of Claim, Claimant requested:

1. Compensatory damages as follows:
  - a. Unpaid principal on the Mississippi Investment in the amount of \$9,000.00;
  - b. Unpaid interest on the Mississippi Investment note in the amount of \$20,000.00;
  - c. Liquidated damages on the Mississippi Investment in the amount of \$112,500.00;
  - d. Well managed damages for the Mississippi Investment in the amount of \$103,211.00;
  - e. Well managed portfolio profits on all of the non-Mississippi Investments that would have been earned had the investments been properly invested in the amount of \$172,427.00;
2. Treble damages under California Civil Code Section 3345;
3. Treble damages under California Welfare & Institutions Code in the amount of \$1,251,414.00;
4. Attorneys' fees under California Welfare & Institutions Code Section 15610.30;
5. Punitive or exemplary damages as may be awarded;
6. Pre and post award interest;
7. Costs of this arbitration; and
8. Such other and further relief as is proper and just.

In the Statement of Answer to Claimant's Statement of Claim, UBS requested:

1. Claimant take nothing by her claim and that this matter be dismissed in its entirety with prejudice;
2. Costs; and
3. Other such relief as the Arbitrators deem just and equitable.

In the Statement of Answer to Claimant's Statement of Claim, Sahu did not set forth a specific request for relief.

In the Statement of Answer to Claimant's First Amended Statement of Claim, UBS requested the same relief as set forth in its Statement of Answer to the Statement of Claim.

In the Statement of Answer to Claimant's First Amended Statement of Claim, Sahu did not set forth a specific request for relief.

In the Cross-Claim, Sahu requested:

1. Claimant take nothing by reason of her Statement of Claim;
2. UBS be ordered to indemnify Sahu for all legal fees and costs incurred with this matter;
3. In the event that liability is attributed to Sahu, UBS be ordered to indemnify him for any award paid to Claimant; and

4. Such further relief that the Arbitrators deem appropriate.

In the Statement of Answer to Sahu's Cross-Claim, UBS requested:

1. Sahu take nothing by his Cross-Claim and that the Cross-Claim be dismissed in its entirety, with prejudice;
2. Sahu be taxed with the costs of this arbitration, including the Arbitrators' fees and expenses; and
3. The Arbitrators grant UBS such other relief as it deems just and equitable.

At the close of the hearing, Claimant requested an award of \$105,524.03 in fees and costs incurred from March 18, 2015 through September 9, 2019 in addition to the previously requested \$103,211.00 in damages for the Mississippi Investment loan and \$116,552.46 in damages for mismanagement of Claimant's investment account, instead of \$172,427.00 as requested in Claimant's First Amended Statement of Claim.

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

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

In July 2018, a FINRA arbitration panel issued an award in this matter. In September 2018, Claimant filed a petition to vacate the award in court. On December 19, 2018, the court granted the petition to vacate and ordered the case to be heard by a new FINRA panel ("Panel").

On January 2, 2019, Sahu filed a Pre-Hearing Brief and asserted a claim seeking expungement of this customer dispute, Occurrence Number 1891879 from registration records maintained by the Central Registration Depository ("CRD").

On May 10, 2019, Respondents filed a Joint Stipulation to Dismiss Sahu's Cross-Claim against UBS.

On September 11, 2019, Claimant's counsel withdrew from representation. Thereafter, Claimant proceeded pro se.

At the evidentiary hearing in December 2019, Claimant stated on the record that, although she had no fairness concerns, her "back is against the wall" because she could not find an attorney willing to represent her and she did not have access to certain documents produced to her attorney during discovery. The Panel offered to postpone the hearing for up to six months to allow time for Claimant to review documents and obtain an attorney. Claimant declined the offer and elected to proceed with the hearing. The Panel noted that Claimant is an attorney admitted to practice law in the State of California and during the evidentiary hearing, she stated that she had conducted jury trials in the past.

On December 23, 2019, the Panel ordered an additional hearing to be held on Sahu's request for expungement, which was scheduled for January 29, 2020. On January 28, 2020, Sahu withdrew the request for expungement. Accordingly, the Panel did not rule on Sahu's request for expungement.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **FINDINGS**

The Panel made the following findings:

As to the claim of mismanagement of Claimant's investment account, Claimant failed to satisfy her burden of proof of negligence, unsuitability, fraud, breach of fiduciary duty, breach of contract, and failure to supervise. Any transactions in Claimant's investment account that were not specifically authorized in advance by Claimant were ratified and confirmed by her receipt of statements and confirmations without objecting to the transactions described therein. Claimant's investment account was well-managed and resulted in profit of \$140,405.00 on an investment of \$747,715.00 over the period from June 2011 to April 2016, representing an internal rate of return on invested funds of 6.8%.

Claimant also claimed damages arising out of a January 4, 2013 loan made by Claimant that has not been repaid. Sahu contacted Claimant regarding an opportunity to derive income from a short term (90 days) loan with respect to the Mississippi Investment. Claimant authorized a wire transfer of \$170,550.00 from her credit line account with UBS to the Secretary of State of Mississippi to pay taxes on the Mississippi Investment and Claimant expected that the principal amount would be repaid plus \$20,000.00 in interest in 90 days. The loan was a private transaction and was not carried as an asset of Claimant's investment account for management by Respondents.

The expected payment in early April 2013 was not made. Claimant did not advise anyone at UBS of the loan or the payment default. In fact, in a telephone call with Ms. D of the UBS compliance department on April 15, 2013, Claimant did not say anything about the loan, which was then in default. UBS had no involvement with the Mississippi loan and could not identify any communications between Sahu and Claimant regarding the loan in UBS' internal email and telephone monitoring systems.

Respondents are not obligors on the Mississippi loan. When Claimant's loan came to the attention of UBS management in spring 2016, Sahu's employment with UBS was terminated. At which time, Sahu had paid Claimant \$9,000.00, and on, June 9, 2016, as an accommodation, UBS credited \$161,550.00 to Claimant's UBS account; the two payments reimbursed her for the principal amount of the January 4, 2013 loan.

Claimant has sustained significant damages because the Mississippi loan principal and accrued interest have not been paid by the obligors, however, Respondents have reimbursed the principal amount of the loan. Any other

claimed damages, including unpaid interest, so called “well-managed account” damages, and costs and attorneys’ fees are the responsibility of others or Claimant. Despite the fact that Claimant’s age qualifies her for special protection as an elder under California law, Respondents did not engage in financial abuse of Claimant and her claim for elder abuse also fails.

### **AWARD**

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

1. Claimant’s claims are denied in their entirety.
2. The Panel did not rule on Sahu’s request for expungement of this matter from his CRD records.
3. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	= \$ 2,000.00
Cross-Claim Filing Fee	= \$ 2,000.00

\*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 firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, UBS is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

#### **Last-Minute Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

January 29, 2020, cancelled by Respondents	= \$1,800.00
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Total Last-Minute Cancellation Fees	= \$1,800.00
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The Panel has assessed the total last-minute cancellation fees to Sahu.

**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 Panel, including a pre-hearing conference with the Panel that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,400.00/session = \$1,400.00  
Pre-hearing conference: April 26, 2019 1 session

Nine (9) hearing sessions with the Panel @ \$1,400.00/session = \$12,600.00  
Hearing Dates: December 2, 2019 2 sessions  
December 3, 2019 2 sessions  
December 4, 2019 2 sessions  
December 5, 2019 1 session  
December 6, 2019 2 sessions

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Total Hearing Session Fees = \$14,000.00

The Panel has assessed \$4,666.66 of the hearing session fees to Claimant.  
The Panel has assessed \$9,333.33 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

Lawrence R. Mills	-	Public Arbitrator, Presiding Chairperson
Isidoro Berkman	-	Public Arbitrator
Ronald Chun	-	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.

**Concurring Arbitrators' Signatures**

***Lawrence R. Mills***

\_\_\_\_\_  
Lawrence R. Mills  
Public Arbitrator, Presiding Chairperson

**02/11/2020**

\_\_\_\_\_  
Signature Date

***Isidoro Berkman***

\_\_\_\_\_  
Isidoro Berkman  
Public Arbitrator

**02/12/2020**

\_\_\_\_\_  
Signature Date

***Ronald Chun***

\_\_\_\_\_  
Ronald Chun  
Public Arbitrator

**02/11/2020**

\_\_\_\_\_  
Signature Date

February 12, 2020

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

# EXHIBIT D

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Jessica Parker Valentine and Bryan L. Parker,  
Individually and as Trustees of the Parker Family  
Trust

Case Number: 19-00592

vs.

Respondents

Interactive Brokers LLC and  
RBC Capital Markets LLC

Hearing Site: Houston, Texas

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Nature of the Dispute: Customers vs. Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Jessica Parker Valentine and Bryan L. Parker, Individually and as Trustees of the Parker Family Trust (collectively "Claimants"): Joseph R. Marrs, Esq., Zev Kusin, Esq., and Vaibhavi Parmar, Esq., Marrs Ellis & Hodge LLP, Houston, Texas.

For Respondent Interactive Brokers LLC ("IB"): Carlos E. Provencio, Esq., Interactive Brokers LLC, Washington, District of Columbia.

Respondent RBC Capital Markets LLC ("RBC") was represented in Case Number 13-01876 by John P. Kincade, Esq., Winstead PC, Dallas, Texas.

**CASE INFORMATION**

**Case Number 13-01876**

Statement of Claim filed on or about: June 25, 2013.

Amended Statement of Claim filed on or about: January 30, 2014.

Second Amended Statement of Claim filed on or about February 5, 2015.

Claimants signed the Submission Agreement: June 25, 2013.

Statement of Answer filed by IB on or about: September 10, 2013.

Statement of Answer to Amended Statement of Claim filed by IB on or about: March 28, 2014.

IB signed the Submission Agreement: September 6, 2013.

Statement of Answer filed by RBC on or about: October 2, 2013.

Statement of Answer to Amended Statement of Claim filed by RBC on or about: March 27, 2014.

RBC signed the Submission Agreement: July 26, 2013.

**Case Number 19-00592**

Statement of Answer to Second Amended Statement of Claim filed by IB on or about: July 19, 2019.

**CASE SUMMARY**

**Case Number 13-01876**

In the Statement of Claim, Claimants asserted the following causes of action against IB and RBC: deceptive trade practices, breach of fiduciary duty and aiding and abetting another's breach of fiduciary duty, negligence and gross negligence, and Texas Blue Sky Law civil liability. The causes of action relate to Claimants' allegation that IB and RBC supervised the trustee of the trust, to which Claimants are beneficiaries, ("Trust") as the trustee breached his duties to Claimants by using the Trust to speculate in high-risk securities contrary to the Trust's limitations, resulting in a loss of half of the Trust's value.

In the Amended Statement of Claim, Claimants asserted the following causes of action against RBC: breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligence and gross negligence, breach of the duty of fair dealing under NASD Rule 2310-2, violations of Texas Securities Act, violation of FINRA Rule 2090/NYSE 405 ("Know Your Customer"), and violation of NASD 3010 and FINRA Supervisory Duties. Claimants asserted the following causes of action against IB: violation of FINRA Rule 2090/NYSE 405 ("Know Your Customer"), churning, violation of FINRA Rule 2111 (Suitability), violation of NASD 3010 and FINRA Supervisory Duties and suitability, aiding and abetting another's breach of fiduciary duty, and negligence and gross negligence. The causes of action relate to Claimants' allegation that IB and RBC actively assisted the trustee in his reckless trading and failed to stop him when they had a duty to protect the beneficiaries' interests. Claimants further alleged that IB and RBC collectively received over \$158,000.00 in commissions by indulging the trustee's unsuitable, speculative trading strategy, which decimated the Trust's corpus.

In the Second Amended Statement of Claim, Claimants asserted the following causes of action solely against IB: aiding and abetting breach of fiduciary duty, negligence and gross negligence (breach of duty of fair dealing), and violation of the Texas Securities Act. The causes of action relate to Claimants' allegation that IB approved and assisted the trustee's reckless trading and failed to stop him when it had a duty to protect the beneficiaries' interests as the listed owners of the Trust account. Claimants further alleged that IB received \$44,807.00 in commissions, fees, and interest.

Unless specifically admitted in IB's Statement of Answer and Statement of Answer to Amended Statement of Claim, IB denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in RBC's Statement of Answer and Statement of Answer to Amended Statement of Claim, RBC denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

**Case Number 19-00592**

Unless specifically admitted in the Statement of Answer to Second Amended Statement of Claim, IB denied the allegations made in the Second Amended Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

**Case Number 13-01876**

In the Statement of Claim, Claimants requested compensatory damages for the breaches of fiduciary duty, disgorgement of profits and of self-dealing transfers received or caused at the expense of the Trust, equitable disgorgement of any fees and forfeiture of any future compensation, treble and/or exemplary damages, attorneys' fees pursuant to Section 17.50(d) of the Texas Business and Commerce Code and other applicable statutes, pre- and post-judgment interest at the highest lawful rate, costs, and for such other and further relief as the Panel may deem just and proper.

In the Amended Statement of Claim, Claimants requested against RBC: damages representing the difference between what a well-managed, suitable portfolio would have generated for the Trust account at RBC and the \$18,000.00 loss that the Trust account actually returned; \$18,000.00 in actual damages for RBC's breach of their duties and violation of FINRA rules and guidelines; disgorgement of \$213,000.00 of RBC's commissions and other profits received or caused at the expense of the Trust, equitable disgorgement of any fees RBC took, and forfeiture of any future compensation, and/or exemplary damages. Claimants requested against IB: \$1.4 million representing the actual damages to the Trust, being the total lost equity in the Trust account, without crediting prior speculative gains against losses; damages representing the difference between what a well-managed, suitable portfolio would have generated for the Trust account at IB and the \$725,000.00 loss that the Trust account actually sustained; \$725,000.00 in actual damages for breach of IB's duties and violation of FINRA rules and guidelines; disgorgement of \$45,000.00 of IB's commissions and other profits received or caused at the expense of the Trust, equitable disgorgement of any fees, and forfeiture of any future compensation; exemplary damages; and/or reasonable and necessary attorneys' fees and costs of arbitration. Claimants further requested against RBC and IB, pre- and post-judgment interest at the highest lawful rate on these amounts, costs of arbitration, and such other and further relief as the Panel may deem just and proper.

In the Second Amended Statement of Claim, Claimants requested damages representing the difference between what a well-managed, suitable portfolio would have generated for the Trust account and the \$725,779.59 loss that the Trust account actually sustained; \$725,779.59 in actual damages for IB's breach of its duties and violation of FINRA rules and guidelines and Texas law; disgorgement of \$45,807.00 of IB's commissions and other profits received or caused at the expense of the Trust,

equitable disgorgement of any fees IB was paid, and forfeiture of any future compensation; general equitable relief; reasonable attorneys' fees and costs of arbitration, and pre- and post-judgment interest at the highest lawful rate on these amounts, costs, and such other and further relief as the Panel may deem just and proper.

In IB's Statement of Answer and Statement of Answer to Amended Statement of Claim, IB requested that all of Claimants' claims be denied and that IB be awarded reasonable attorneys' fees and costs.

In RBC's Statement of Answer and Statement of Answer to Amended Statement of Claim, RBC requested that Claimants' Statement of Claim be dismissed with prejudice, that Claimants take nothing, that RBC be award its forum fees and arbitration costs, including refund of the member surcharge, that this matter be expunged from an Unnamed Party's registration records maintained by the Central Registration Depository ("CRD"), and all other and further relief to which RBC is entitled. In the Statement of Answer to Amended Statement of Claim, RBC also requested indemnification of costs and fees as provided in the account agreements.

### **Case Number 19-00592**

In the Statement of Answer to Second Amended Statement of Claim, IB requested that all of Claimants' claims be denied and that IB be awarded reasonable attorneys' fees and costs.

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

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

On April 28, 2015, an award was issued in Case Number 13-01876 by another arbitration panel ("Prior Award"). By court order dated October 23, 2015, the District Court of Harris County, Texas vacated the Prior Award. Accordingly, this matter was reopened under the present case number and a new panel was appointed to rehear this matter.

The Arbitrators made no determination with respect to the claims against RBC or RBC's request for expungement of the Unnamed Party's registration records maintained by the CRD, because Claimants withdrew their claims against RBC and RBC did not pursue its expungement request prior to this matter being reopened.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

1. Claimants' claims are denied in their entirety.
2. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
3. Any and all claims for relief not specifically addressed herein, including exemplary damages and attorneys' fees, are denied.

### **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	= \$ 1,725.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Office of Dispute Resolution previously deferred the Claimants' filing fee of \$1,725.00. Upon conclusion of the matter, the Panel determined to assess the fee.

#### **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 a party, IB is assessed the following:

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

#### **Discovery-Related Motion Fee**

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	= \$ 200.00
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Claimants submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

#### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing Conference: October 7, 2019		1 session
One (1) pre-hearing session with the Panel @ \$1,300.00/session	= \$	1,300.00
Pre-hearing Conference: June 17, 2019		1 session
Seven (7) hearing sessions @ \$1,300.00/session	= \$	9,100.00
Hearing Dates:		
December 16, 2019		2 sessions
December 17, 2019		2 sessions
December 18, 2019		2 sessions
December 19, 2019		1 session
<hr/>		
Total Hearing Session Fees	= \$	10,850.00

The Panel has assessed \$5,425.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$5,425.00 of the hearing session fees to IB.

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

**ARBITRATION PANEL**

Robert C. Rice	-	Public Arbitrator, Presiding Chairperson
Lynne M. Gomez	-	Public Arbitrator
Stephen Andrew McCarthy	-	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.

**Concurring Arbitrators' Signatures**

***Robert C. Rice***

\_\_\_\_\_  
Robert C. Rice  
Public Arbitrator, Presiding Chairperson

01/14/2020

\_\_\_\_\_  
Signature Date

***Lynne M. Gomez***

\_\_\_\_\_  
Lynne M. Gomez  
Public Arbitrator

01/14/2020

\_\_\_\_\_  
Signature Date

***Stephen Andrew McCarthy***

\_\_\_\_\_  
Stephen Andrew McCarthy  
Public Arbitrator

01/14/2020

\_\_\_\_\_  
Signature Date

January 14, 2020

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

# EXHIBIT E

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Jose Valenzuela  
PFS Investments, Inc.

Case Number: 14-00412

vs.

Respondents

Victoria Smith  
Deborah Stubbs  
Harold Thomas

Hearing Site: Miami, Florida

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Nature of the Dispute: Associated Person and Member vs. Customers

**REPRESENTATION OF PARTIES**

For Claimants Jose Valenzuela ("Valenzuela") and PFS Investments, Inc. ("PFS"): Mark F. Raymond, Esq., Broad and Cassel, Miami, Florida.

For Respondents Victoria Smith, Deborah Stubbs and Harold Thomas: Frank R. Rodriguez, Esq., Rodriguez Tramont Guerra & Nunez, P.A., Coral Gables, Florida.

**CASE INFORMATION**

Statement of Claim and Application for Expungement filed on or about: February 10, 2014.

Respondent Valenzuela signed the Submission Agreement: February 10, 2014.

Respondent PFS signed the Submission Agreement: February 10, 2014.

Statement of Answer filed by Respondents on or about: May 13, 2014.

Victoria Smith did not sign the Submission Agreement.

Deborah Stubbs did not sign the Submission Agreement.

Harold Thomas did not sign the Submission Agreement.

**CASE SUMMARY**

Claimants asserted that reference to FINRA Case No. 12-00188 should not appear on Claimant Valenzuela's Central Registration Depository ("CRD") records because, pursuant to a stipulation of the parties, the Miami-Dade County Circuit Court entered an Order dated January 30, 2014, vacating in its entirety the final Award in Case No. 12-00188 and dismissing all of the claims asserted in that arbitration, with prejudice.

In their Statement of Answer, Respondents disagreed with many of the allegations set forth in the Statement of Claim but did not oppose the relief requested by Claimants.

### RELIEF REQUESTED

In their Statement of Claim, Claimants requested expungement of all references to FINRA Case No. 12-00188 from Claimant Valenzuela's registration/regulatory records, including, without limitation, his CRD records.

In their Statement of Answer, Respondents did not specifically delineate a relief request.

### OTHER ISSUES CONSIDERED AND DECIDED

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

Respondents did not file with FINRA Dispute Resolution properly executed Submission Agreements but, having answered the claim, are bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator conducted a recorded telephonic hearing on September 4, 2014, so the parties could present oral argument/evidence on Claimants' request for expungement on behalf of Claimant Valenzuela. Respondents did not oppose the expungement request and opted not to appear at the hearing.

### AWARD

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

1. Claimant Valenzuela's request for expungement is denied.

### FEES

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

#### Filing Fees

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

Initial Claim Filing Fee	= \$ 1,500.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Claimant PFS is assessed the following:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,200.00

**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(s), including a pre-hearing conference with the arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing conference: August 11, 2014	1 session	
One (1) Hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing Date: September 4, 2014	1 session	
<b>Total Hearing Session Fees</b>	<b>= \$</b>	<b>900.00</b>

The Arbitrator has assessed the total hearing session fee of \$900.00 jointly and severally to Claimants.

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

**ARBITRATOR**

Steven Gerard Goerke

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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**

  
\_\_\_\_\_  
Steven Gerard Goerke  
Sole Public Arbitrator

10-14-2014  
\_\_\_\_\_  
Signature Date

10/15/14  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution office use only)