

**Expungement Award  
FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Kurt Jackson

Case Number: 23-03640

vs.

Respondent  
Kestra Investment Services, LLC.

Hearing Site: Los Angeles, California

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

The expungement hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Kurt Jackson (“Claimant”): Richard A. D’Amura, Esq., D’Amura & Zaidman, PLLC, Los Angeles, California.

For Respondent Kestra Investment Services, LLC. (“Respondent”): Shawn Shook, Esq., Kestra Investment Services, LLC, Austin, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: December 27, 2023.

Claimant signed the Submission Agreement: December 27, 2023.

Statement of Answer filed by Respondent on or about: January 9, 2024.

Respondent did not sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s expungement request made in the Statement of Claim.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant (CRD Number 2913769) requested:

1. A recommendation of expungement of all references to the customer complaint (Occurrence Number 2283087) from Claimant's CRD, with the understanding that, pursuant to FINRA Rule 2080, Claimant must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
2. A finding that, as to Claimant, the claims, allegations or information are factually impossible, clearly erroneous and/or false.

In the Statement of Answer, Respondent requested the Panel award no damages from Respondent.

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

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and having answered the claim, is bound by the determination of the Panel on all issues submitted.

February 5, 2024, Claimant advised that the customer in Occurrence Number 2283087 ("Customer") was served with notice of the expungement request. The Panel noted the Customer was not served with a copy of the Statement of Claim and a copy of the Statement of Answer within 10 days of filing, and the Panel did not consider that determinative as the documents were received by the Customer many months before the expungement hearing date.

On May 23, 2024, the authorized representative of the California Department of Financial Protection and Innovation (the state securities regulator for California) submitted a written statement opposing the expungement request, unless extraordinary evidence is presented at the expungement hearing. On June 18, 2024, Claimant filed a response to the California Department of Financial Protection and Innovation's submission.

On June 9, 2024, the Customer submitted a written statement opposing the expungement request.

On September 19, 2024, Respondent submitted a waiver of its right to appear at the expungement hearing.

The Panel conducted a recorded hearing by videoconference on September 24, 2024, so the parties could present oral argument and evidence on Claimant's request for expungement. Claimant participated by videoconference at the expungement hearing. Respondent did not participate in the expungement hearing.

The Customer did not participate in the expungement hearing. The authorized representative of state securities regulator for California participated in the expungement hearing and opposed the expungement request.

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.

### **FINDINGS**

The Panel found Claimant to be a credible witness. The issue before the Panel was not the merits of the Customer's claim of unsuitability, but whether the language on the U5 meets the standard for expungement under FINRA Rule 13805. Two of the Panel members decided it did not.

It is accurate that the original customer filed a complaint with FINRA against the firm alleging an investment recommended by Claimant was unsuitable. The complaint was not filed solely on behalf of Claimant's customer but also involved more customers and other investments recommended by additional brokers. Without consulting Claimant and without him making any monetary contribution, the brokerage house settled the entire matter for \$375,000, to be divided in an unknown percentage among all the litigating customers.

While it would have been fairer to Claimant to add a few words to the description on his U5, such as "settled for \$375,000, only partially applicable to his customer", the majority of the Panel members found that the omission does not make the entry "clearly erroneous" or "false".

The California Department of Financial Protection and Innovation (DFPI) appeared and raised a procedural deficiency in Claimant's case. Since October 16, 2023, a claimant is required to notify the customer within ten (10) days of filing on the FINRA portal. Claimant conceded that this required notice to the Customer was several weeks late. While the Rule uses mandatory language, it does not seem to include a mandatory consequence. Since the material was received by the Customer with many months to respond, the Panel decided to consider the service appropriate and not to use this lapse as part of its decision.

### **AWARD**

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

1. Claimant's request for expungement of Occurrence Number 2283087 from registration records maintained by the CRD is denied.
2. 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 Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 1,600.00
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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, Respondent is assessed the following:

Member Surcharge	= \$	2,000.00
Member Process Fee	= \$	3,850.00

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

One (1) pre-hearing session with the Panel @ \$1,150.00/session	= \$	1,150.00
Pre-Hearing Conference: March 22, 2024	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: September 24, 2024	1 session	
<b>Total Hearing Session Fees</b>	<b>= \$</b>	<b>2,300.00</b>

The Panel has assessed the total hearing session fees to Claimant.

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

**ARBITRATION PANEL**

Susan C Lushing	-	Public Arbitrator, Presiding Chairperson
Katherine Hendricks	-	Public Arbitrator
Robert Dean McKinley	-	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**

***Susan C Lushing***

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Susan C Lushing  
Public Arbitrator, Presiding Chairperson

**10/07/2024**

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

***Katherine Hendricks***

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Katherine Hendricks  
Public Arbitrator

**10/09/2024**

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

**Dissenting Arbitrator's Signature**

***Robert Dean McKinley***

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Robert Dean McKinley  
Public Arbitrator

**10/11/2024**

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

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October 11, 2024

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Date of Service (For FINRA Dispute Resolution Services use only)