

AWARD

FINRA DISPUTE RESOLUTION

CASE #: [REDACTED]

[REDACTED] (Claimant) vs. National Planning Corporation (Respondent)

REPRESENTATION OF PARTIES:

For Claimant [REDACTED]: Dochter Kennedy MBA, JD and Owen Hartnett, Esq., Advisorlaw, LLC, Broomfield, Colorado.

For Respondent National Planning Corporation: Scott R. Forbush, Esq., National Planning Corporation, Lansing, Michigan.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: September 19, 2016.

CASE SUMMARY: Claimant asserted a claim seeking expungement of a customer complaint, dispute occurrence number 603742 (the "Underlying Complaint"), from his registration records maintained by the Central Registration Depository ("CRD").

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

- 1) Expungement of the Underlying Claim from Claimant's CRD record pursuant to FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous;
 - 2) Expungement of the Underlying Claim from Claimant's CRD record pursuant to FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
 - 3) An award of damages in the amount of \$1.00 from Respondent for its part in contributing to the Claimant's injury; and
 - 4) Any and all other relief that the Arbitrator deems just and equitable.
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AWARD: The Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claim for \$1.00 against Respondent is denied.
- 2) Claimant's request for expungement is granted.

The Arbitrator recommends the expungement of all references to customer dispute occurrence number [REDACTED] from registration records maintained by the CRD, for Claimant (CRD # [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant 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 findings of fact: the claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

Claimant's recommendations for the customer were suitable. Confusion was introduced by a third party who had an economic interest in the outcome and made no effort to resolve the confusion. Claimant's conduct was professionally correct throughout a difficult situation.

3) All other relief requests are denied.

OTHER FEES: Respondent has paid to FINRA Office of Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

The Arbitrator has assessed the \$50.00 hearing session fee for the initial pre-hearing scheduling conference to Claimant.

The Arbitrator has assessed the \$50.00 hearing session fee for the expungement hearing to Claimant.

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

On November 1, 2016, Claimant filed a request for simplified arbitration with a telephonic or video expungement hearing.

The Arbitrator conducted a recorded a telephonic hearing on February 9, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing.

On February 9, 2017, Claimant advised that the customer from the Underlying Claim passed away in 2003.

On February 13, 2017, Respondent advised that it had reviewed the Statement of Claim and takes no position on Claimant's requested expungement. Respondent requested that it not be required to participate in the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report and confirmed that Claimant had not previously requested expungement of the Underlying Complaint.

The Arbitrator notes that the Underlying Complaint resolved as “Closed/No Action” and that no settlement documents exist.

In recommending expungement, the Arbitrator relied upon the testimony of Claimant. Exhibits 1 to the Statement of Claim (a letter dated September 13, 1999 from Claimant to NASD Regulation in connection with the customer’s complaint and Exhibit 2 to the Statement of Claim (a letter dated August 16, 1999 from Claimant to the customer regarding account changes) were admitted into evidence as was the obituary of the customer.

ARBITRATOR

Samuel L. McClaren

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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



Samuel L. McClaren
Sole Public Arbitrator

FEB. 27, 2017
Signature Date

February 27, 2017
Date of Service (For FINRA-DR office use only)