

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

National Planning Corporation and
Voya Financial Advisors, Inc.

Hearing Site: Detroit, Michigan

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ (██████████): Dochter Kennedy, Esq., AdvisorLaw LLC,
Broomfield, Colorado.

For Respondent National Planning Corporation ("NPC"): Scott R. Forbush, National
Planning Corporation, Lansing, Michigan.

For Respondent Voya Financial Advisors, Inc. ("VFA"): Mark Sides, VP, Voya Financial
Advisors, Inc., Des Moines, Iowa.

CASE INFORMATION

Statement of Claim filed on or about: November 15, 2016.
██████████ signed the Submission Agreement: November 15, 2016.

Statement of Answer filed by NPC on or about: February 16, 2017.
NPC signed the Submission Agreement: January 3, 2017.

Statement of Answer filed by VFA on or about: January 31, 2017.
VFA signed the Submission Agreement: February 8, 2017.

CASE SUMMARY

██████████ asserted the following cause of action: expungement. The cause of action relates
to four customer complaints, which ██████████ alleges were meritless.

NPC and VFA did not take positions on the requested relief.

RELIEF REQUESTED

In the Statement of Claim, ██████████ requested: \$1.00 in compensatory damages,

expungement, and other monetary relief.

In their Statements of Answer, NPC and VFA did not request relief.

OTHER ISSUES CONSIDERED AND DECIDED

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

NPC and VFA did not appear at the evidentiary hearing. In their Statements of Answer, NPC and VFA stated that they would not participate in the proceedings and did not take a position on the expungement requests.

In his Order dated March 23, 2017, the Arbitrator ordered [REDACTED] to serve his Statement of Claim and a copy of the Order dated March 23, 2017 on the customers from the underlying complaints ("Customers") on or before April 6, 2017 and to provide a copy of the certificate of service to FINRA Dispute Resolution. The deadline for the Customers to file either an Answer and/or written statement on the request for expungement was May 8, 2017. The Customers did not file additional documents.

The Arbitrator conducted a recorded telephonic hearing on June 2, 2017, so the parties could present oral argument and evidence on [REDACTED] requests for expungement.

NPC and VFA did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosures in his registration records maintained by the Central Registration Depository ("CRD").

The Arbitrator found that there was a settlement relating to Occurrence Number [REDACTED]. The Arbitrator reviewed the settlement agreement and found that [REDACTED] did not contribute to the settlement amount, and the settlement agreement was not conditioned upon the customer's agreement not to oppose expungement. The Arbitrator determined that there were no settlement agreements relating to Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] for which [REDACTED] requested expungement.

In recommending expungement for Occurrence Number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: the testimony and Exhibits 1, 2, 3, and 27 to 31. In recommending expungement for Occurrence Number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: the testimony and Exhibits 4 to 14. In recommending expungement for Occurrence Number [REDACTED], the Arbitrator relied upon the following documentary or other evidence: the testimony and Exhibits 3, 15 to 18, 22, and 23.

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 Arbitrator has decided in full and final resolution of the sole issue of expungement submitted for determination as follows:

1. [REDACTED] request for compensatory damages is denied.
2. [REDACTED] request for expungement of Occurrence Number [REDACTED] is denied.
3. The Arbitrator recommends expungement of Occurrence Numbers [REDACTED], [REDACTED], and [REDACTED] from the registration records maintained by the CRD for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [REDACTED] 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:

Occurrence Number [REDACTED]

In 1999, J.W. became a client of [REDACTED]. J.W. had over 20 years of investment experience. He worked full time. J.W.'s investment objective was growth with a moderate risk tolerance. In 2001, J.W. indicated he was interested in investing in mutual funds. [REDACTED] reviewed the available funds with J.W. and discussed the details of the investment with J.W. on at least three occasions prior to purchase. J.W. selected one of the funds that [REDACTED] had presented and sent an email to [REDACTED] authorizing [REDACTED] to invest in the fund using less than five percent of J.W.'s total portfolio. In March 2001, the economy went into a recession which was later aggravated by September 11, 2001. The Dow Jones Industrial Average went down for another year, until October 2002. In 2002, the market continued to decline. The value of J.W.'s mutual fund declined in stride with the markets overall. On February 9, 2006, J.W. alleged that [REDACTED] did not follow directions and erroneously purchased the wrong mutual fund in December of 2001. J.W. requested that the surrender charges and account closing fees be waived and sought compensatory damages in the amount of \$6,967.41. After conducting an investigation, VFA denied the claim on July 6, 2006, as [REDACTED] produced an email

in which J.W. had authorized the trade in question. J.W. did not pursue his claim in arbitration or court.

J.W.'s claim that [REDACTED] did not follow directions and erroneously purchased the wrong mutual fund in December 2001 is erroneous and false and meets the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard. J.W. authorized the purchase of the trade in question in writing via an email in 2001. Since [REDACTED] followed J.W.'s instructions, and purchased the correct mutual fund in December of 2001, the public disclosure of this allegation does not offer any protection to the public, does not have regulatory value and will not provide relevant information to assist in knowledgeable decision making.

Occurrence Number [REDACTED]

In 2007, Customers R.W. and S.W. brought their accounts to [REDACTED] R.W. and S.W. had 30 years of investment experience. Their investment objective was growth and income with a moderate risk tolerance. They stated they did not require additional income from the potential investment, and they had no liquidity needs. [REDACTED] met with R.W. and S.W. on several occasions to present them with investment options. R.W. and S.W. preferred a variable annuity because of its guaranteed minimum income benefit ("GMIB") rider. [REDACTED] provided R.W. and S.W. with a prospectus for a Variable Annuity ("Annuity") and explained the GMIB rider. [REDACTED] explained that there were no guarantees as to the performance of the Annuity. [REDACTED] disclosed all risks of the investment including its long-term nature. R.W. and S.W. provided written acknowledgment and authorization of risks and details of the investment, as well as the suitability of the investment for their investment needs. On September 28, 2007, R.W. purchased the Annuity in his individual account. On October 4, 2007, S.W. purchased the Annuity in her traditional IRA account. On October 18, 2007, R.W. and S.W. purchased a subsequent investment in the Annuity. For the purchase of their Annuity, the R.W. and S.W. completed the necessary forms on which they indicated: (a) their primary investment objective was growth, (b) their risk tolerance was moderate, (c) their investment time horizon was long, and (d) their estimated liquid net worth outside of the Jackson Annuity investment was \$200,000 to \$490,999. R.W. and S.W. signed the Order Forms, on which they acknowledged their understanding of the surrender fee schedule associated with the Jackson Annuity as well as receipt of the prospectus. On the Insurance Suitability Questionnaire portion of the Order Forms, R.W. and S.W. acknowledged that: (a) [REDACTED] reviewed the features of the Annuity with them, (b) R.W. and S.W. believed that the Annuity met their financial objectives, and (c) R.W. and S.W. were financially able to tolerate an investment loss, including a possible loss of principal.

In the first quarter of holding the Annuity, the Annuity declined in value. R.W. and S.W. brought their concerns to [REDACTED], who conveyed to R.W. and S.W. that the investment would fluctuate in value and reiterated the long-term nature of the investment. On April 15, 2008, R.W. and S.W. alleged an unsuitable investment and market loss. R.W. and S.W. claimed that they did not understand the risks they were taking and that [REDACTED] guaranteed six percent interest with the Jackson Annuity. The R.W. and S.W. sought compensatory damages in the amount of

\$20,036.39. After conducting an investigation, NPC denied the claim on May 15, 2008, finding that the complaint was without merit, as R.W. and S.W. were provided with the necessary disclosures associated with their purchases of the Annuity, including risks, fees, and surrender schedule. R.W. and S.W. did not pursue their claim in arbitration or court.

Pursuant to FINRA Rule 2111, [REDACTED] had a reasonable basis to believe that the Annuity was suitable for R.W. and S.W. based upon the information obtained through the reasonable diligence of NPC, [REDACTED], R.W. and S.W. to ascertain R.W. and S.W.'s investment profile. R.W. and S.W. had 30 years of investment experience, an objective of growth and income, and a moderate risk tolerance. They were looking for an investment to supplement their retirement from which they did not require liquidity. The GMIB was the benefit that made the Annuity more appealing than the R.W. and S.W.'s other investment options. The Annuity was intended to be a long-term investment, over the course of which there would assuredly be fluctuations in the value of the Annuity. R.W. and S.W. complained because of the fluctuation in their Annuity's value after only one quarter of owning the investment.

R.W. and S.W.'s allegation of an "unsuitable investment and market loss" is erroneous and false and meets the FINRA Rule 2080(b)(1)(A) standard and the FINRA Rule 2080(b)(1)(C) standard. The Annuity investment met their stated needs and objectives.

Since [REDACTED] made a suitable recommendation, the public disclosure of the allegations herein does not offer any public protection and does not have regulatory value. If not expunged, this customer dispute will not assist in knowledgeable decision making.

Occurrence Number [REDACTED]

In 2003, Customers J.A. and K.A., were referred to [REDACTED]. [REDACTED] interview with J.A. ascertained that both J.A. and K.A. were employed, and they did not have liquidity needs. J.A. had more than 20 years of investment experience. J.A. was investing with the objective of growth. [REDACTED] reviewed the options available to J.A. that were both suitable for his investor profile and that aligned with J.A.'s portfolio, future goals, and need for diversification. These investments included mutual funds and a variable annuity that are not at issue, as well as a real estate investment trust ("REIT"). [REDACTED] and J.A. met several times prior to the investment to discuss the details and risks involved with an REIT. In 2005, J.A. elected to invest less than eight percent of his portfolio in the REIT at \$10 per share. From the time of purchase through 2008, the REIT paid a seven percent dividend. In 2009, the REIT reduced its dividend to three percent and ultimately eliminated the dividend in the following year. In 2010, the REIT was revalued to \$4.25 per share and was not able to liquidate. In September of 2010, J.A. received a solicitation from a plaintiff's attorney regarding the REIT. J.A. subsequently forwarded the solicitation to [REDACTED] with a note expressing his displeasure with the REIT investment. J.A. claimed that he was not advised of the potential risks of the REIT and that he now had over \$150,000 frozen and

over \$40,000 lost since the revaluation of the REIT shares. On September 28, 2010, upon receipt of the facsimile, [REDACTED] shared it with NPC. NPC deemed J.A.'s facsimile to be a complaint against [REDACTED] and reported it as J.A. alleging misrepresentation of a REIT investment. On October 15, 2010, upon learning that the facsimile had been deemed a complaint, J.A. wrote a letter to NPC requesting a withdrawal of the "complaint," as he did not intend to file a complaint against [REDACTED]. NPC accepted J.A.'s complaint withdrawal via letter and listed the claim status as "Withdrawn."

The reported allegation of "misrepresentation of REIT investment" is erroneous and false and meets the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard. [REDACTED] made all disclosures to J.A. regarding the REIT prior to J.A.'s decision to invest. The temporary underperformance of the REIT was related to a real estate recession at that time. J.A. never intended to submit a complaint and provided written documentation as such. J.A. subsequently withdrew what NPC had deemed to be a complaint. This withdrawal was accepted by NPC.

Since Case made a suitable recommendation, the public disclosure of the allegation does not offer any public protection and does not have regulatory value.

4. [REDACTED] request for other monetary relief is denied.
5. All other relief requests 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	= \$ 50.00
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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 parties, National Planning Corporation and Voya Financial Advisors, Inc. are assessed the following:

National Planning Corporation

Member Surcharge	= \$150.00
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Voya Financial Advisors, Inc.

Member Surcharge	= \$150.00
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