AWARD
FINRA Office of DISPUTE RESOLUTION

CASE #: [redacted] (Claimant) vs. Securities America, Inc. (Respondent)

REPRESENTATION OF PARTIES:
For Claimant [redacted]: Dochtor Kennedy, MBA, JD and Owen Harnett Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent Securities America, Inc.: Eric A. Michaels, Esq., Saretsky Hart Michaels + Gould, Birmingham, Michigan.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: April 27, 2017.

Statement of Answer filed by Respondent on or about: June 1, 2017.

CASE SUMMARY: Claimant requested expungement of a total of five occurrences from his Central Registration Depository ("CRD") record ("Underlying Claims"): four customer complaints, occurrence numbers [redacted], [redacted], [redacted] and [redacted]; and an NASD arbitration, occurrence number [redacted].

In the Statement of Answer, Respondent advised that "all five complaints were denied following an investigation. In each instance, it was determined that the customer was provided with the information alleged to have been misrepresented or omitted." Respondent advised that it does not contest the present action and stipulates to the expungement of the Underlying Claims from Claimant's CRD records.

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

1. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information is factually impossible or clearly erroneous.
2. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information is false.
3. Compensatory 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.

In the Statement of Answer, Respondent did not set forth a relief request. However, Respondent objected to the allegation that it contributed to Claimant's injury.

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

On August 7, 2017, Claimant's counsel sent each of the five customers in the Underlying Claims a copy of the Statement of Claim, the Case Information Sheet and

the Initial Pre-hearing Scheduling Order by certified mail. Claimant's counsel filed with FINRA an Affidavit of Service dated August 8, 2017, which confirmed the same.

Written responses were received from two of the five customers in the Underlying Claims. On August 10, 2017, Mr. CB (the underlying customer in occurrence number [redacted]) sent a letter to Claimant's counsel stating that "because we wish [Claimant] no harm, there is no interest or appetite for our participating further in this process. That said, there are inaccuracies in the summary of what happened, and we stand by our statement and belief that we were not initially adequately informed about the very complicated insurance products being sold to us. We have accepted what [Ms. B] of [Respondent] told us in her March 15, 2004 letter – that this matter is closed." On October 2, 2017, Mr. RB (the underlying customer in occurrence number [redacted]) sent an email to Respondent's counsel contesting the request for expungement. On the same date, he also sent an email to FINRA to ensure that his comments would be considered at the expungement hearing. He advised that he would provide his contact details for the hearing and requested that he be notified of the final decision. On October 3, 2017, Mr. RB sent another email to FINRA contesting the request for expungement. The Arbitrator considered all of Mr. RB's written responses.

The Arbitrator conducted a recorded telephonic hearing on November 1, 2017 so the parties could present oral argument and evidence on Claimant's request for expungement.

Only Mr. RB (the underlying customer in occurrence number [redacted]) participated in the expungement hearing and contested the request for expungement. The other customers in the Underlying Claims did not participate in the expungement hearing.

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

The customer dispute in occurrence number [redacted] was settled in 2005 for an amount of $9,500.00 between the customer (Mr. H), Respondent and Security America Advisors, Inc. after an NASD arbitration claim (No. [redacted]) was filed. The Arbitrator reviewed the settlement documents, considered the amount of payments made, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the underlying customer not opposing the request for expungement. The Arbitrator noted that, although Claimant was named in the NASD claim and settlement agreement as a party, he did not contribute to the settlement amount. Further, Claimant admitted to no wrongdoing.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the Underlying Claims.

The Arbitrator reviewed Claimant's BrokerCheck® Report and CRD report.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Brokercheck® Report and CRD report, Statement of Claim and Respondent's Statement of Answer. Additionally, the Arbitrator relied upon the following documentary or other evidence:

In recommending expungement of occurrence number [redacted] (in which Mr. H is the underlying customer)

- Investor Disclosure and Acknowledgement Forms for Mr. H dated May 30, 2001.
- U.S. Individual Income Tax Return 2000 for Mr. H.
- Variable Annuity – Portfolio Optimization Agreements for Mr. H dated May 30 2001.
- Pacific Life Pacific Value Variable Annuity Application for Mr. H dated May 30, 2001.
- Pacific Life Quarterly Statement for Mr. H dated June 11-June 30, 2001,
- Pacific Life Letters to Hartford Life Insurance Company, Anchor National, and Sun America Securities dated June 4, 2001.
- Pacific Life Transaction Confirmations for Mr. H dated June 11, 2001.
- Pacific Life Letter to Mr. H dated June 26, 2001.
- Claimant's letter to Mr. H dated May 30, 2001.
- Claimant's letter to Mr. H dated November 19, 2001.
- Pacific Life letter to Mr. H dated November 28, 2001.
- Pacific Life Quarterly Statement for Mr. H dated April 11-June 30, 2002.
- Claimant's letter to Respondent dated September 16, 2003.
- Pacific Life Portfolio Optimization Enrollment Request dated July 16, 2003.
- Mr. R's letter to Respondent re Mr. H complaint dated September 16, 2003.
- Mr. H complaint letter to Respondent dated August 13, 2003.
- Respondent's letter to Mr. H re: Written Complaints dated October 16, 2003.
- Respondents' (Respondent, Securities America Advisors, Inc. and Claimant) Statement of Answer and Counterclaim in arbitration matter between Mr. H, Respondent, Claimant, and Securities America Advisors, Inc. dated July 26, 2004.
- Statement of Claim before the National Association of Securities Dealers in the arbitration of Mr. H, et al. v. The Respondent, et al, dated March 22, 2004.
- Settlement Agreement and Mutual Release between Mr. H, Respondent, Securities America Advisors, Inc., and Claimant dated February 7, 2005 to March 20, 2005.

In recommending expungement of occurrence number [redacted] (in which Mr. CB is the underlying customer)

- Suitability certificate and Prospectus Receipt signed by Mr. CB and dated October 21, 1996.
- Respondent's Client Investment Policy Profile and Client Agreement for Mr. CB dated October 18, 1996.
- Respondent's New Account Application for Mr. CB dated December 24, 1996.
- Equitable Life Insurance Company of Iowa Variable Annuity Application for Mr. CB dated December 24, 1996.
- Respondent's Order Transmittal Form for Mr. CB dated December 24, 1996.
- Understanding your Mutual Fund or Variable Annuity Acknowledgement Statement signed by Mr. CB and dated December 24, 1996.
- Claimant's letter to Mr. and Mrs. CB dated February 3, 1998.
- Claimant's letter to Mr. and Mrs. CB dated March 2, 1998.
- Mr. CB's letter to Claimant dated January 30, 2004.
- Claimant's memorandum dated March 2, 2004 to Securities America CRRG re: Mr. CB.

- ING letter to Mr. CB dated March 15, 2004.
- Respondent's letter to Mr. CB dated March 15, 2004.
- Claimant's letter to Allianz Life Compliance Department dated September 10, 2009.

In recommending expungement of occurrence number [redacted] (in which Mr. and Mrs. E are the underlying customers)

- Agent Suitability Questionnaire for Mr. and Mrs. E.
- Stock Market Downturn of 2002 Wikipedia article.
- "The Fall of The Marker in the Fall of 2008," Investment article by Paul Kosakowski on Investopedia.
- Claimant's Retirement Planning Confidential Strategic Retirement Questionnaire dated August 21, 2001.
- Allianz Life Insurance Company of North America Important Notice: Replacement of Life Insurance of Annuities for Mr. and Mrs. E dated September 30, 2002.
- Allianz Life Insurance Company of North America BonusDex Annuity Statements of Understanding for Mr. and Mrs. E dated September 30, 2002.
- Policy Delivery Receipts for Mr. and Mrs. E dated October 12, 2002.
- Receipt for Funds Received for Mr. and Mrs. E dated October 16, 2002.
- Confidential Questionnaire for Mr. and Mrs. E dated October 30, 2003.
- Mr. and Mrs. E's Complaint with the Colorado Division for Insurance dated July 29, 2009.
- Allianz Life Insurance Company of North America to Mr. and Mrs. E dated September 14, 2009.
- Allianz 2010 Annual Policy Statement for the BonusDex Annuity belonging to Mrs. E dated September 28, 2009 to September 27, 2010.
- Claimant's letter to ING Compliance dated May 24, 2012.

In recommending expungement of occurrence number [redacted] (in which Mrs. O is the underlying customer)

- Investor Disclosure and Acknowledgement Form for Mrs. O dated February 26, 2008.
- Respondent's Account Application for Mrs. O dated February 26, 2008.
- Variable Annuity Purchase Acknowledgement for Mrs. O dated February 26, 2008.
- Respondent's letter to Mrs. O, dated February 28, 2008.
- Info-Sheet for Claimant notes re: Mr. He and Mrs. O dated November 16, 2011.
- Mrs. O's letter of compliance to ING USA Annuity and Life Insurance Company Compliance Department dated May 17, 2012.
- ING letter to Mrs. O dated June 22, 2012.

In recommending expungement of occurrence Number [redacted] (in which Mr. RB is the underlying customer)

- Respondent's Account Application for Mr. RB's Trust dated December 13, 2011.
- Account Transfer Form for Mr. RB dated December 13, 2011.
- Mr. RB's Statement of Investment Selection dated December 13, 2011.
- Respondent's welcome letter to Mr. RB dated January 22, 2012.
- Claimant's response to Mr. RB dated July 2, 2012.
- Respondent's letter of response to Mr. RB dated August 7, 2012.

- Claimant's response to Mr. L dated December 3, 2012.
- Managed Account Application and Agreement for Mr. RB dated December 13, 2012.

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Arbitrator recommends the expungement of all references to the Underlying Claims from registration records maintained by the CRD, for Claimant [redacted] (CRD# [redacted]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

   The claim, allegation, or information is factually impossible or clearly erroneous; or
   The claim, allegation, or information is false.

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

   Claimant seeks expungement of five separate occurrences from different customers. Currently, Claimant is a security advisor for Securities America Advisors, Inc. in Englewood, Colorado, and a Wealth Management advisor in Centennial, Colorado, where he has worked for 22 years. Prior to that, Claimant had worked in the industry approximately 11 years at the following firms: Principal Financial Group, Lynn Hutchison and Associates, and Guardian Life. He received his Bachelor of Finance from Arizona. Claimant has serviced over 6,000 clients in the past 33 years.

   Occurrence Number [redacted] (in which Mr. H is the underlying customer)

   On February 6, 2001, Mr. H met Claimant at an educational dinner presentation hosted by Claimant. At the time, Mr. H was invested almost entirely in aggressive, volatile, and high-risk equity investments in Sun America with another advisor. These small cap and aggressive growth investments dramatically rose and declined during market turns. After losing over 40% during the last market downturn, Mr. H examined options for a more diversified conservative approach, specifically seeking to reduce risk and better preserve principal. Six weeks later, after consulting with different advisors at other seminars, Mr. H chose Claimant for consolidation of his investments. In April 2001, Mr. H and Claimant met after Mr. H thoroughly reviewed a Prospectus and Client Information Kit. Again, the next month, Mr. H reiterated his goals and long-term strategy of account preservation, consolidation, portfolio optimization using dollar-cost averaging, and the premier death benefit. At that time,

Mr. H was 67 years old and retired. He was a knowledgeable and sophisticated investor. After interviewing Mr. H, reviewing the Suitability Form, the Account Application, as well as his investment objectives, Claimant understood Mr. H wanted professional strategists from a single provider, as opposed to working with numerous investment companies with different strategies.

On May 30, 2001, Mr. H officially became a client of Claimant. Mr. H liquidated his investments and transferred them to Pacific Life Variable Annuity ("PLVA"). Mr. H signed separate disclosures for Qualified and Non-Qualified IRAs. Claimant explained because annuities can be confusing, he offered additional documents to educate, inform and support this change, which Mr. H signed. Mr. H initialed numerous documents setting forth the surrender charges, expenses, and M&E. He also signed forms allowing for liquidation and reinvestment of his investments.

Mr. H chose the Portfolio Optimization Strategy, "Model C" based on his investment goals. It included a conservative mix of 60% equities and 40% bonds, which was a significant departure from previous investments (which were nearly 100% equities). This investment program used 11 strategies and included rebalancing each quarter, thereby eliminating extreme market fluctuations. Mr. H expressed to Claimant comfort in this moderate, conservative, well-managed portfolio strategy.

In this Annuity Contract, a contingent deferred sales charge ("CDSC") of 7% would be incurred on early withdrawals. This 7% charge, would ultimately decline to zero after 7 years. Mr. H confirmed in writing there are no promises or no guarantees of future performance, and that investments fluctuate in value. Claimant explained he gets paid a fee for providing service on this annuity. By taking a 4% bonus upfront, Mr. H initialed that he understood he was subject to a higher annual fee and higher surrender charges.

On June 11, 2001, Mr. H's accounts from Sun America, Hartford Life Insurance Company, Anchor National and Sun America were transferred to Respondent and trade confirmations of these investments were sent to him. This investment constituted approximately 50% of Mr. H's portfolio. During the 10-day "free-look" period, Mr. H was told he had a right to cancel the investment free of charge, but he did not. On June 26, 2001, Mr. H enrolled in a scheduled withdrawal program, setting up monthly withdrawals of $1,000.00.

Claimant met Mr. H regularly. Quarterly statements were always mailed out detailing the amount of money dollar-costed into the investment, as well as the rebalancing which occurred. Mr. H frequently called and repeatedly inquired whether his bonus was credited and whether all fund transactions took place. During these conversations, Mr. H was directed to his statements, which verified these transactions.

On November 28, 2001, Mr. H cancelled his enrollment in a withdrawal program. On December 28, 2001, Mr. H, believing he had not received any bonuses on his initial investment, spoke with Mr. R, who worked for Respondent. Mr. R reviewed Mr. H's statements over the phone with Mr. H reflecting the premium amounts had been invested and bonuses had been applied to premiums. When Mr. H asked if there

was a surrender charge to move his money, Mr. R explained the surrender charges as set forth in the Prospectus. At that time, Mr. H declined an invitation to meet Claimant, but over the next few months, Claimant and Mr. H did meet.

In September 2003, after Mr. H attended an investment seminar hosted by another firm, Mr. H met Claimant. Once again, Claimant explained to Mr. H the 4% bonus had been paid. Mr. H told Claimant that he could choose to invest in an annuity elsewhere (which offered him a 10% bonus and 3.5% fixed interest), but that if he liquidated at that time, he would incur a substantial CDSC. Mr. H became irate, threatened Claimant, and told him if he did not waive the fee, he would "make him pay."

On July 30, 2003, Mr. H filed a complaint with Respondent seeking $27,000.00 in compensatory damages. Mr. H claimed PLVA "was misrepresented and an unsuitable investment." Mr. H alleged Claimant, "did not discuss any negatives – there was no discussion of risk, fees, commission, or termination fees." Mr. H further stated he did not realize the money was in an annuity and was "totally unaware" of surrender charges and fees. He alleged there was no agreement to dollar cost averaging and based on these claims, he accused Claimant of misrepresentation, wrongful action, mutual fund switching, unauthorized trade transactions and not keeping him apprised, unauthorized surrender charges, failure to follow instructions, and failure to provide and notify full facts. Mr. H also alleged he was never informed of the "free-look" period.

Respondent dismissed the complaint finding no wrongdoing. Respondent found the customer was provided proper product notice, the customer signed and initialed documents confirming acknowledgement and understanding of the policies features, the bonus, and surrender charges. The customer received the Prospectus, Quarterly statements, his 4% bonus, and chose to dollar-cost his investment over 12-months into a fixed account. Respondent found evidence that Claimant repeatedly explained the bonus had been paid and what surrender charges would be.

On October 16, 2003, Mr. H filed an arbitration claim with NASD (now known as FINRA). As of July 26, 2004, Mr. H had not incurred any surrender charges and PLVA was still in place. On March 30, 2005, Respondent settled this claim with Mr. H for approximately 1/3 of requested damages, with Claimant not contributing to the settlement amount.

Mr. H's loss occurred during the dot.com bubble, which took place between March 2000 and 2002.

On these facts, THE CLAIM, ALLEGATION, OR INFORMATION is false, clearly erroneous or factually impossible.

Occurrence Number [redacted] (in which Mr. CB is the underlying customer)

Mr. CB attended an educational seminar hosted by Claimant. Mr. CB told Claimant he wanted a new advisor so that he could devote more time to church, community

and his personal interests. After interviewing several advisors, Mr. CB chose Claimant.

On October 21, 1996, Mr. CB signed Securities America Advisors, Inc.'s Client Investment Policy Profile and a Client Agreement. The Profile stated Mr. CB was seeking Retirement Planning with an Investment Objective of Growth and Income and a time horizon of 10+ years. Mr. B signed a Suitability and Prospectus Receipt. Mr. CB also signed a NTSC IRA appointing FMTC as Custodian and National Services Corporation as sole carrier broker dealer to perform administrative services and Respondent as the broker dealer.

On December 24, 1996, Mr. CB signed the Equitable Life Insurance Company of Iowa Variable Annuity Application. Claimant approved this investment as suitable for Mr. CB based on his Financial Status and investment experience. This Variable Annuity had a 7-year surrender charge. After purchase of the Annuity, Claimant and Mr. CB met semi-annually to discuss fees and expenses related to Mr. CB's IRA, its performance and current goals and objectives. Mr. CB also received quarterly statements for seven years, which showed both the Accumulation Value and Cash Surrender Value.

Just prior to the seven year anniversary date, Mr. CB decided to leave ING. Without contacting Claimant, Mr. CB contacted ING directly. Claimant testified that ING conveyed incorrect information to Mr. CB so he engaged in an early withdrawal of his variable annuity contract, transferred his investment to a local bank trust department, and incurred a small, early withdrawal penalty (.48%) on an account with a substantial investment. When Mr. CB contacted ING, he was told the penalty would go away on his anniversary date, but when that date arrived ING refused to transfer him the funds. Mr. CB reported that had ING notified him of the early surrender penalty, he would have waited for the anniversary date. By the time Claimant learned of the issue and attempted to intervene, the withdrawal had already occurred. When ING did not repay the penalty on his anniversary date, Mr. CB complained.

On January 30, 2004, Mr. CB contacted Claimant. On March 1, 2004, Mr. CB contacted Respondent. On March 15, 2004, Respondent replied in letter to Mr. CB after Claimant learned of the matter, but before receipt of transfer paperwork for the variable annuity contract, ING advised Mr. CB of an option to reinstate the Variable Annuity contract to reverse the surrender penalty that had been charged on the account within 60 days from time contract was transferred; however, Mr. CB chose not to exercise this option. Respondent denied the claim relying upon Mr. CB's signature on the Annuity Application dated December 24, 1996, acknowledging receipt of the Prospectus, which included the information regarding surrender penalties on withdrawals from or surrender of the variable annuity contract.

Claimant represented at the hearing that Mr. CB is now deceased. However, the response to the expungement request filed by Mr. CB on August 10, 2017 states, "we wish Claimant no harm." It alleges inaccuracies in the summary of what happened, no facts support the allegation. The response acknowledges acceptance

of the letter received from Respondent, dated March 14, 2004, that this "matter is closed."

On these facts, THE CLAIM, ALLEGATION, OR INFORMATION against Claimant is false, clearly erroneous or factually impossible.

Occurrence Number [redacted] (in which Mr. and Mrs. E are the underlying customers)

On September 19, 2001, Claimant met Mr. and Mrs. E, approximately two months after they had attended a seminar he hosted. A few days later, after being dissatisfied with existing investments elsewhere in terms of lack of performance and lack of volatility, they transferred two accounts from separate Variable Annuities into PLVAs conservative portfolio optimization Model C (60% in equities and 40% in bonds) with Respondent. There were no penalties or surrender charges for these transfers.

At that time, Mr. and Mrs. E were in their 60s and retired. They had an annual income and liquid net worth approximately 5x their annual income. Claimant learned through interviews, completed questionnaires and confidential forms their investment objectives were growth with 8-10% income as secondary objective. Mr. and Mrs. E indicated their risk tolerance was moderate, and they had no liquidity needs for 10 or more years.

In March 2002, stock prices began a steady decline, resulting in severe declines in July and September, and creating a significant downturn of 20% in the market. Mr. and Mrs. E panicked, pulled out money, and demanded an immediate change because of the market decline. Claimant discussed many options. Mr. and Mrs. E insisted on liquidating the variable annuities and purchasing guaranteed fixed equity indexed annuities with Allianz. This was a limited flexible premium tax deferred fixed index annuity.

On September 28, 2002, wanting to do something different, Mr. and Mrs. E made an unsolicited purchase of an Allianz Annuity Contract with 67% of their portfolio with Respondent. Due to market decline and fluctuation, Mr. and Mrs. E chose investment guarantees. Over the next few months, Mr. and Mrs. E were pleased to transfer several PLVA contracts to Allianz Annuities. Each Allianz Annuity Contract required the signing of a Statement of Understanding, which included penalty-free withdrawal provision and the requirements for receiving full annuitization value. Each contract also included a 30-day "free-look" period, to review the contracts, ask questions and return them to Allianz for full refund for any reason. Mr. and Mrs. E chose Allianz Annuities because of the 10% bonus paid to them on day 1, the contracts were guaranteed, there was no market risk, and the investment was not subject to market decline. They wanted this investment for the safety and security provided by managed account annuities. The investment had no liquidity for 10 years. At that time, Mr. E's retirement income was meeting their needs.

Mr. and Mrs. E received annual account statements setting forth the Amortization value and cash surrender value. Mr. E took required minimum distributions and Mrs.

E received two penalty-free withdrawals in 2004 and 2006. By taking these Allianz withdrawals, it demonstrated Mr. and Mrs. E's familiarity with their contracts and provisions. Mr. and Mrs. E moved to Florida and remained in communication with Claimant by phone. Mr. and Mrs. E never raised questions or concerns with Claimant about Allianz Annuity. Although they continued multiple conversations regarding understanding of options and withdrawal provisions within their policies, they made no withdrawals triggering any penalties.

In July 2008, the Dow Jones Industrial Average traded at a two-year low. On September 8, 2008, after the markets had declined nearly 20% since their previous peak of October 2007, the US government announced plans to take over Fannie Mae and Freddie Mac due to losses in resulting from the subprime mortgage crisis. On September 14, 2008, Lehman Brothers announced the "largest bankruptcy filing in U.S. history at the time" and the next day, "the markets declined sharply, with the Dow closing down 499 points." On September 29, 2008, the Dow experienced its largest drop in history of 774 points.

On February 9, 2009, Mr. and Mrs. E contacted Claimant's Office explaining they had contacted Allianz to make a withdrawal from their annuities and were told they could not withdraw funds without a large penalty. Claimant also reinforced to Mr. and Mrs. E they would pay a large penalty if they withdrew between $5,000.00 and $10,000.00. Claimant explained the terms of the policy to Mrs. E. At that time, Mrs. E told Claimant she would contact him if they were going to make a change, but Claimant heard nothing from them for six months.

On September 11, 2009, Mr. and Mrs. E filed a complaint with Colorado Division of Insurance seeking $5,000.00 alleging "the liquidation of their variable annuities to purchase equity indexed annuities was not suitable." Allianz denied the Claim against both Claimant and Respondent for penalty-free surrender of the contracts finding Mr. and Mrs. E were aware of all conditions and provisions in their indexed annuities and the Claims were false. Allianz found no evidence of misrepresentation or lack of disclosure of the contract provisions. Mr. and Mrs. E never filed claims with FINRA or in State court.

On these facts, THE CLAIM, ALLEGATION, OR INFORMATION against Claimant is false, clearly erroneous or factually impossible.

Occurrence Number [redacted] (in which Mrs. O is the underlying customer)

Claimant knew Mrs. O and Mr. He (Mrs. O's husband) long before they engaged in a professional relationship because they were long-time neighbors and friends. The families raised their children together. Mrs. O was a retired pharmaceutical representative. Mr. He had worked in the IT industry. Both customers were highly educated, experienced, and knowledgeable investors, with Mrs. O previously owning an annuity. Mrs. O was 56 years old.

The couple approached Claimant to rollover her 401(k) from her former employer for safety, stability, and a guaranteed return. These customers were familiar with various products. Even though the investment was only for Mrs. O., Claimant

interviewed the couple together, relied upon answers from the account application regarding her goals and objectives, and with use of investment tools determined her objective to be growth and income with moderate risk and no liquidity needs. Claimant understood their time horizon to be long-term, of at least 10 years.

On January 9, 2008, Claimant held their first investment meeting and discussed different products. On February 6, 2008, Mrs. O discussed the advantages and disadvantages of the ING Landmark LifePay Plus Minimum Guaranteed Withdrawal Benefit ("Landmark Annuity") with the LifePay Plus Rider. At their third meeting, on February 26, 2008, Mrs. O took a lump sum from liquidating an annuity elsewhere and invested into the Landmark Annuity. She acknowledged by signature receipt of the Landmark Annuity Prospectus, the Landmark Annuity Application, The Investor Disclosure and Acknowledgement Form, and Respondent's Variable Annuity Purchase Acknowledgement Form. This investment included 7% guaranteed growth benefit with a 5% guaranteed income benefit. Claimant discussed the Prospectus which defined the Early Withdrawal Fees and Penalties and death benefit. An additional Disclosure Form from Respondent required Mrs. O to initial her further understanding of all surrender charges, fees, and costs. The rider fees were explained thoroughly to the couple and Mr. He was listed as the death beneficiary. Claimant explained what information would be included in each quarterly statement. The Contract included a "free-look" period whereby the contract could be returned with no penalty. During the "free-look" period, there were no communications from Mrs. O.

Later, Mrs. O and Mr. He approached Claimant for advice when they were experiencing serious financial problems. Both Mrs. O and Mr. He had lost their jobs, college tuition was owed for one daughter, and money was needed to pay bills. Claimant referred them to both a mortgage broker and a real estate broker to avoid foreclosure. Unfortunately, their adverse financial situation denied them the ability to refinance or restructure themselves, as they had little equity. Furthermore, a realtor was unable to sell the house because of the decline in the area's housing market.

On November 21, 2011, after exhausting all other sources of funds, Mrs. O took a lump-sum partial withdrawal. Before making this withdrawal, Claimant advised Mrs. O individually that the investment would lose 7% growth, although she could guarantee income in the future. After making the withdrawal, Mr. He separately approached Claimant to withdraw money from his wife's account. Claimant advised Mr. He separately of the surrender charges and penalties and that he was not authorized to make such withdrawal. Both Mrs. O and Mr. He renewed conversations with Claimant and Respondent after the withdrawal. Less than one month later, Mrs. O transferred money from her work IRA into the same Landmark Annuity. At no time, did either she or Mr. He express any concerns to Claimant or Respondent.

On May 17, 2012, Mrs. O filed a complaint with ING, alleging she was not advised of fees, costs and expenses connected to the variable annuity, that she was not aware her variable annuity withdrawal would affect the living benefit rider, and requested ING's reinstatement of the 7% living benefit rider. ING denied the complaint finding both allegations clearly erroneous.

During this relationship, Mrs. O and Mr. He met Claimant 14 times, Mrs. O received 16 quarterly account statements, she engaged in numerous communications explaining fees, surrender charges, and the impact of the rider upon surrender. Furthermore, Mrs. O received the Prospectus and affirmed numerous documents affirming her understanding of the fees, costs, and expenses connected to this Annuity. Claimant met both Mrs. O and Mr. He both separately and together to keep them informed and answering their repeated questions about surrender charges, penalties, fees, and death benefits.

On these facts, THE CLAIM, ALLEGATION, OR INFORMATION against Claimant is false, clearly erroneous or factually impossible.

Occurrence Number [redacted] (in which Mr. RB is the underlying customer)

In September 21, 2011, Mr. RB met Claimant for a one-on-one lunch meeting at a restaurant. Mr. RB was in his 60s, retired, with a respectable annual income and substantial liquid net assets. Mr. RB approached Claimant after working with other advisors in similar investments. Together Mr. RB and Claimant discussed his goals, objectives, time horizon and risk tolerance. They discussed fees, expenses, charges and various strategies to maximize returns since day 1. At the first meeting, Mr. RB provided account statements and answered a confidential form which helped Claimant prepare his recommendation.

In less than one year, Claimant saw Mr. RB face-to-face nine times in meetings (which each lasted more than one hour in duration) and engaged in many phone conversations. Mr. RB had online access, managed his accounts every day, and was sent monthly account statements. Neither Claimant nor his team ever declined a meeting with Mr. RB or refused to answer his questions. Documentation supports Mr. RB was provided spreadsheets and information the following business day in response to his requests.

Claimant described Mr. RB as a knowledgeable, sophisticated, smart, and intelligent investor with 30+ years of investment experience. Before opening any account, Mr. RB expressed to Claimant an understanding of complex concepts and strategies and excitement in Claimant's investment approach. Over several meetings, Claimant learned Mr. RB was primarily focused on growth and income but was "emphatic" about being a long-term (over 10 years) investor with a moderate risk tolerance. Mr. RB expressed liquidity needs within the next five years, when his wife was planning to retire. During each meeting, Claimant discussed fees, risk tolerance, time horizon, and liquidity needs. Mr. RB expressed more comfort with managed accounts built upon customized strategies using third party managers in managed accounts rather than platforms in constructing the portfolio. Claimant told Mr. RB a balanced strategy diversified portfolio could include all or none of the following investment vehicles: equities (common stocks & preferred stocks), mutual funds and ETFs. Mr. RB expressed familiarity with annuities, mutual funds and managed accounts.

On December 13, 2011, during their fifth meeting (in three months), Mr. RB chose investments, signed the filled-out account paperwork (pre-populated by LaserApp),

and completed all investment transfer paperwork to open his accounts. Claimant explained each form and the investment types that could be included in the balanced strategy diversified portfolio account offered by the third-party manager. No blank forms were produced. These documents set forth the maximum fees and all costs; although, their undisputed oral agreement was the actual fees would be less. All of Mr. RB's accounts were fee-based only accounts. Mr. RB never paid a commission or any additional transaction cost. Claimant provided Mr. RB, "line-by-line" and "page-by-page" explanations of every question on the new account forms.

That same day, Mr. RB was provided copies of paperwork he signed, as well as copies of the ADV Part II on a disc before leaving Respondent's Office. Mr. RB's signature is on a form acknowledging receipt of ADV Part II. At that time, Mr. RB was told he could receive additional ADVs directly from Respondent, upon request. When Mr. RB complained by phone twice he had not received the new account paperwork, he was provided additional sets at meetings in the office on March 7, 2012 and May 16, 2012. Claimant stated in 33 years, Mr. RB has been the only client to say he did not receive new account paperwork and a disc after opening an account. Claimant testified that Mr. RB expressed no doubt he was unwilling or unable to get started. Mr. RB signed every opening account document, asked no questions about money management, and made no changes in his accounts until they were closed.

Mr. RB testified that he had more than 30 years of investment experience and had invested in annuities in the last five to ten years. When Mr. RB's account declined in value, he complained, and problems started. Claimant stated Mr. RB became anxious, agitated, abusive, argumentative, demanding and impatient with Claimant and his staff (of two females). Mr. RB used colorful language and was unkind. Claimant testified that he never participated in discussions about unwanted mutual funds with Mr. RB. Claimant indicated all investment decisions were made at the manager level and not at the advisor level and Mr. RB understood this clearly from their initial meeting before any accounts were opened.

On July 12, 2012, Mr. RB filed a claim with Respondent seeking $31,746.00. Mr. RB alleged: (1) "he signed blank forms and an appropriate suitability profile was not established prior to selecting his investments"; (2) "he was charged higher fees than agreed upon" and (3) his investments contained unwanted mutual funds." Mr. RB presented no evidence the signed forms were blank, the suitability profile was not completed before investments were chosen, what was inappropriate about the suitability profile, that he was charged higher fees, or that the investments contained unwanted mutual funds. Respondent denied the claim as erroneous and without merit after conducting interviews and reviewing documents. Mr. RB never filed a FINRA action or pursued a State court claim.

Mr. RB was a "hands-on" investor, yet during their relationship, he communicated no changes in investment goals or objectives to Claimant or Respondent. During this period, the market was declining. Mr. RB's chief complaint appears to be until he received possession of the new account documents on May 6, 2012, he was unable to compute his cost basis; however, he does not suggest with possession of this information that Claimant's recommendation was unsuitable.

The financial advice presented to Mr. RB was suitable and consistent with his disclosed investment objective and strategy. Mr. RB participated in this hearing disputing every "comment about the complaint" and alleging misrepresentation by Claimant. Mr. RB was no novice investor or participant. He was conversant, investment savvy, and fully aware of what he was doing in choosing investment products and agreeing to fees. Although Mr. RB repeated in the hearing that his statements reflect he paid more than their agreed-to fee amount, he provided not one example supporting this allegation. Mr. RB produced no evidence Claimant placed unwanted mutual funds in his portfolio.

On these facts, THE CLAIM, ALLEGATION, OR INFORMATION against Claimant is false, clearly erroneous or factually impossible.

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

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

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

Initial Claim Filing Fee	=$ 50.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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 a single arbitrator @ $50.00/session			=$50.00
Pre-hearing conference:	July 31, 2017	1 session	
Two (2) hearing session on expungement request @ $50.00/session			=$100.00
Hearing Date:	November 1, 2017	2 sessions	

Total Hearing Session Fees =$150.00

The Arbitrator has assessed $150.00 of the hearing session fees to Claimant.

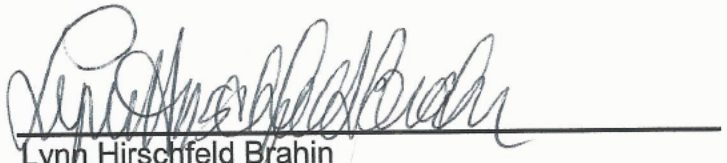
All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATOR

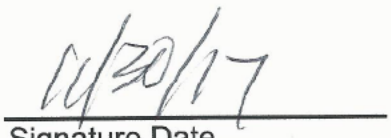
Lynn Hirschfeld Brahin - Sole Public Arbitrator

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



Lynn Hirschfeld Brahin
Sole Public Arbitrator



Signature Date

December 1, 2017
Date of Service (For FINRA-ODR office use only)