

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondents

LPL Financial LLC
National Planning Corporation

Hearing Site: San Francisco, California

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant ██████████ (“Claimant”): Armin Sarabi, Esq., AdvisorLaw
Broomfield, Colorado.

For Respondent LPL Financial LLC (“LPL”): Jon D. Kaplon, Esq., LPL Financial LLC,
Boston, Massachusetts.

For Respondent National Planning Corporation (“NPC”): Scott R. Forbush, National
Planning Corporation Legal, El Segundo, California.

Hereinafter, LPL and NPC are collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: September 6, 2017.
Claimant signed the Submission Agreement: September 6, 2017.

Statement of Answer filed by LPL on or about: November 1, 2017.
LPL signed the Submission Agreement: October 24, 2017.

Letter in response to Statement of Claim filed by NPC on or about: November 3, 2017.
NPC signed the Submission Agreement: September 14, 2017.

CASE SUMMARY

Claimant asserted a claim seeking expungement of two occurrences (“Underlying
Claims”): one customer complaint, occurrence number ██████████, and one FINRA

arbitration/civil litigation, occurrence number [REDACTED] from his Central Registration Depository ("CRD") record.

In its Statement of Answer, LPL advised that it does not oppose Claimant's request for expungement of the Underlying Claims, but denied any wrongdoing alleged by Claimant.

In its letter response to the Statement of Claim, NPC advised that it takes no position on the requested relief.

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 occurrence number [REDACTED] from his CRD record pursuant to FINRA Rule 2080(b)(1)(B), as the Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of the Underlying Claims from his CRD record pursuant to FINRA Rule 2080(b)(1)(C), as the claims, allegations or information are false;
4. In the event that the Arbitrator should choose not to use its discretion in expunging the Underlying Claims, Claimant requests that the amount of Claimant's individual contribution in the settlement of occurrence number [REDACTED], which is currently reported to his CRD record to be \$50,000.00, be amended to reflect Claimant's total actual contribution of \$0.00;
5. Damages in the amount of \$1.00 from Respondents; and
6. Any and all other relief that the Arbitrator deems just and equitable.

In its Statement of Answer, LPL requested that Claimant's request for damages be denied and that all costs, forum fees and other charges relating to this case be assessed to Claimant.

In its letter response to the Statement of Claim, NPC requested that it not be required to enter a formal appearance in this matter or to participate in the expungement hearing

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 16, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing was served on the customer in occurrence number [REDACTED] ("Mr. W") and the customer in occurrence number [REDACTED] ("Ms. E"), hereinafter collectively referred to as "Underlying Customers."

On January 17, 2018, Claimant filed an Affidavit of Service signed by Claimant's counsel advising that the Underlying Customers were served with the Statement of Claim.

On April 4, 2018, counsel for Ms. E submitted an email to FINRA advising that Ms. E opposes the expungement request and intends to participate and provide evidence in the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on April 10, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

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

Ms. E and her counsel participated in the expungement hearing and contested the request for expungement. Mr. W did not participate in the expungement hearing and did not file a response to the request for expungement with FINRA.

After the hearing on April 10, 2018, counsel for Ms. E submitted an email with additional materials for the Arbitrator's review.

On April 11, 2018, the Arbitrator advised that parties that any response to Ms. E's April 10, 2018 submission or any additional submissions would be due by April 18, 2018.

On April 16, 2018, Claimant submitted a response to Ms. E's email on April 10, 2018 and his notes from a meeting with Ms. E.

On May 3, 2018, the Arbitrator requested additional submissions regarding the following: (1) the conversation Claimant's counsel represented he had with Mr. W during the evidentiary hearing; and (2) the effect that the sub-manager's management had on Ms. E's account.

On May 29, 2018, Claimant filed a Response to Arbitrator's Request for Additional Information regarding the sub-manager's management of Ms. E's account.

On June 6, 2018, Claimant's counsel filed a response to the Arbitrator's request for information regarding his communication with Mr. W.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator reviewed the settlement documents in occurrence number [REDACTED], considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on Ms. E not opposing the request for expungement. The Arbitrator also noted that despite the fact that the settlement documents state that Claimant, Respondents, and another party were to contribute to the payment and Claimant's BrokerCheck® Report also states that Claimant contributed to the settlement payment, the Arbitrator found that Claimant did not contribute to the settlement amount. Based on Claimant and LPL's representations at the expungement hearing, the Arbitrator determined that the BrokerCheck® Report is in error as Claimant did not contribute to the settlement payment.

The Arbitrator found that there was no settlement in occurrence number [REDACTED], as the complaint was denied by LPL.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: Statement of Claim with Exhibits; LPL's Answer to Statement of Claim; NPC's Letter in response to Statement of Claim; Settlement Agreement and Release with respect to Ms. E's complaint; Additional Submission from Ms. E dated April 10, 2018 in Connection to Claimant's Expungement Request; Claimant's Response dated April 16, 2018 to Ms. E's Additional Submission; Claimant's Notes from Meeting with Ms. E and Explanation; Claimant's Response dated May 29, 2018 to Arbitrator's Request for Additional Information; Claimant's counsel's submission with notes from telephone call with Mr. W; Claimant's testimony; and Ms. E's testimony.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

AWARD

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

1. The Arbitrator recommends the expungement of all references the Underlying Claims, occurrence numbers [REDACTED] and [REDACTED], 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 false.

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

Occurrence Number [REDACTED] (Mr. W)

On October 9, 2012, Mr. W transferred his account at LPL from another broker ("Ms. G"), who had managed it for 13 years and who had now retired, to Claimant. On

February 20, 2013, Mr. W filed a complaint that he had not wished to transfer into a managed account and wished to have his management fees refunded.

LPL investigated the complaint, found it to have no merit and denied it. LPL found that Mr. W had never previously expressed a desire to transfer into an unmanaged account, knowingly signed documents transferring the account which clearly stated that it was a managed account, received statements noting that it was a managed account and that Claimant had attempted, on numerous occasions, to meet with Mr. W to discuss the account but that Mr. W had never responded to his requests to set up a meeting.

In addition, Claimant's counsel stated, in the telephonic expungement hearing on April 10, 2018, that he had spoken with Mr. W and that Mr. W stated that he does not oppose Claimant's request for expungement and, substantially, agrees with Claimant's version of the events.

The Arbitrator found Claimant's explanation of the matter, primarily in his Statement of Claim, but also in his oral testimony, to be clear, cogent, reasonable and persuasive. While it is possible that Mr. W may have, in fact, wanted to transfer into a self-directed account, there is absolutely no evidence that he ever made this desire known to either Ms. G, Claimant or LPL prior to February 20, 2013. Therefore, his request to have his previous management fees refunded was without merit.

This conclusion is only bolstered by Mr. W's own recent statement that he does not oppose the expungement request and that he, substantially, agrees with Claimant's version of the events.

As such, because the underlying claim is false, I recommend expungement of this occurrence from Claimant's CRD.

Occurrence Number [REDACTED] (Ms. E)

Ms. E became a client of Claimant in February 2003. Based on Claimant's advice, Ms. E invested in two variable annuities. On May 20, 2013, Ms. E sent a letter of complaint to Claimant. Her primary complaint was that the investment in the variable annuities had not been a suitable investment for her. She also complained that she had been unaware of a sub-manager for part of her account and that the fees paid to that sub-manager were improper.

The matter was eventually settled. Claimant did not contribute to the settlement, despite what was reported on his BrokerCheck® Report.

In this arbitration case, Ms. E made an appearance, along with her attorney, Christopher Cooke.

Ms. E and Mr. Cooke took the position and strongly argued that the investments were unsuitable for Ms. E and that the employment of the sub-manager was improper.

When the underlying customer contests the request for expungement, I take such an objection extremely seriously and give it great weight. As a result, I have read and studied both the written submissions and oral testimony of both parties in great detail in order to fully understand both Ms. E's needs and situation at the time the investments were made, Claimant's reasoning in making the investments and the nature of the investments themselves.

This is particularly important because variable annuities are a vehicle which can often be misused and are appropriate only in certain very specific instances and with specific clients.

However, after carefully analyzing both the variable annuities at issue and Claimant's stated reasoning for recommending them to Ms. E, I believe that the recommendation was an appropriate one designed to best meet the various needs and objectives of Ms. E at that time. In particular, the variable annuities produced the rate of return that Ms. E needed, at an appropriate risk level and also allowed her to make reasonable withdrawals to meet her anticipated needs. I found that Claimant was doing his best to act in Ms. E's best interests, was reasonable in his judgments and was not intentionally attempting to take advantage of Ms. E or enrich himself at her expense.

One could argue that only an investor of a certain level of sophistication should be placed in variable annuities which does not apply to Ms. E in this case. However, I found that, on the whole, that is not an overriding factor here and that, while the call may have been a close one in this case, in the end, having this matter remain on Claimant's CRD is more harmful than useful for those who might be examining his CRD.

In addition, I believe that Claimant's recommendation and employment of a sub-manager for a portion of the portfolio was done solely to best protect the interests of Ms. E and not for Claimant's own benefit. I asked Claimant to provide information as to the nature of the sub-manager's management activity. The information provided shows that the sub-manager was actively managing the account. Claimant states that it is not possible to do any reasonable objective analysis of whether the account fared better under the sub-manager compared to how it would have fared otherwise.

However, I believe that Claimant was, at all times, acting in good faith and with the best interests of Ms. E in mind and that, therefore, on the whole, having this matter remain on Claimant's CRD is more harmful than useful.

Therefore, because to the best of my determination, the underlying claim is false, I recommend expungement of the occurrence from Claimant's CRD.

2. Claimant's request for \$1.00 in damages is denied.
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	= \$ 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute.

Accordingly, as a party, LPL is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, NPC is assessed the following:

Member Surcharge	= \$ 150.00
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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: January 3, 2018 1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: April 10, 2018 1 session	

Total Hearing Session Fees	= \$100.00
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The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

ARBITRATOR

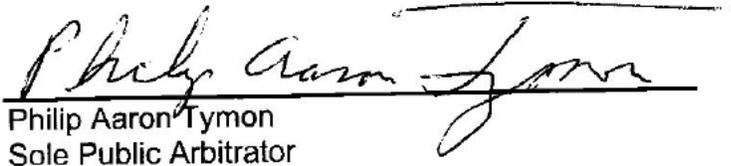
Philip Aaron Tymon

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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


Philip Aaron Tymon
Sole Public Arbitrator

6/28/18
Signature Date

June 29, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)