

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

Case Number

vs.

Respondent
LPL Financial LLC

Hearing Site: Newark, New Jersey

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] Michael Bessette, Esq., AdvisorLaw LLC, Broomfield, Colorado.

For Respondent LPL Financial LLC: Jon Kaplon, Esq., LPL Financial LLC, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: January 19, 2018.

[REDACTED] signed the Submission Agreement: January 19, 2018.

Statement of Answer filed by Respondent on or about: April 27, 2018.

LPL Financial LLC signed the Submission Agreement: February 24, 2018.

CASE SUMMARY

Claimant asserted the following cause of action: expungement.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim to the extent Claimant is alleging any wrongdoing against Respondent and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of occurrence number [REDACTED] from his CRD records; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested the Arbitrator deny Claimant's request for compensatory damages. Respondent does not oppose Claimant's request for expungement.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator conducted a recorded telephonic hearing on September 7, 2018 so the parties could present oral argument and evidence on Claimant [REDACTED] request for expungement.

Claimant provided the FINRA Office of Dispute Resolution with proof that he served the customer in the underlying complaint with notice of his expungement request and notice of the customer's right to participate and testify at the expungement hearing. The customer submitted correspondence regarding Claimant's request for expungement but did not participate in the expungement hearing and took no position regarding the request for expungement.

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

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED]

The Arbitrator noted that Claimant [REDACTED] did not previously file a claim requesting expungement of occurrence number [REDACTED]

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, party submissions, Claimant's BrokerCheck® Report, account documentation; and letter from the client.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, 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 to occurrence number [REDACTED] from registration records maintained by the Central Registration Depository ("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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

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

In the reported occurrence, the customer alleged, some three years after the fact and after he had transferred the account away from the Claimant, that commissions in respect of certain transactions in 2008 were not disclosed. It appears that the customer was a sophisticated investor with a substantial portfolio at the time he opened two Strategic Asset Management ("SAM") accounts with the Claimant in 2007. The SAM accounts were discretionary fee-based long term assets on which the customer was billed an annual fee of .8%. Claimant did not receive commissions on a transactional basis. The specific products at issue (an AXA annuity, an Inland REIT, and a Frontier Fund) were purchased by client in 2007-2008. There is no allegation that they were unsuitable, and in fact they performed up to expectations. The customer received and executed all required account documentation and disclosures, including fees. The customer does not deny that he received this material, his only comment in response to the request for expungement was that it was voluminous. The annual asset management fee stated above did not apply to any of these purchases because they were in accounts held at the respective investment sponsor. Additionally, the Claimant was compensated by the sponsor and not by the customer. The customer's claim was denied by the firm on the foregoing grounds, and it was not pursued in any forum. The Claimant testified that he has made no prior application for the relief sought herein. He also testified as to the negative impact this disclosure has had on his business development and marketing efforts.

2. Any and all claims for relief not specifically addressed herein 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 a party, LPL Financial LLC 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, including a pre-hearing conference with the arbitrator, 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 3, 2018		1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: September 7, 2018		1 session

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

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

ARBITRATOR

Robert E. Anderson

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



Robert E. Anderson
Sole Public Arbitrator

9/19/18

Signature Date

September 19, 2018

Date of Service (For FINRA Office of Dispute Resolution office use only)