

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
[REDACTED]

Case Number [REDACTED]

vs.

Respondent
LPL Financial LLC

Hearing Site: San Diego, California

Nature of the Dispute: Associated Person vs. Member

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Owen Harnett, Esq., HLBS Law, Westminster, Colorado.

For Respondent LPL Financial LLC ("Respondent"): Jon D. Kaplon, Esq., Vice President and Associate Counsel, LPL Financial LLC, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: April 26, 2018.
Claimant signed the Submission Agreement: April 26, 2018.

Respondent did not file an Answer or sign the Submission Agreement.

CASE SUMMARY

Claimant asserted a claim seeking expungement of a customer dispute, occurrence number [REDACTED] ("Underlying Claim"), from his Central Registration Depository ("CRD") record.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Claim from his CRD record pursuant to:
 - a. FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous; and
 - b. FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but, having filed a Notice of Appearance and attended the Initial Pre-Hearing Conference, is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

On August 28, 2018, Claimant provided notice that the customer in the Underlying Claim ("Customer") had been served with the Statement of Claim and notice of the expungement hearing.

On September 7, 2018, Claimant filed an Affidavit of Service advising that the Customer had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 2, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Neither Respondent nor the Customer participated in the expungement hearing. Upon review of the file, the Arbitrator determined that both Respondent and the Customer have been properly served with the Statement of Claim and received due notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that the Underlying Claim did not settle and therefore the Arbitrator did not review any settlement documents.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Customer's complaint letter dated April 13, 2009 to Respondent; Respondent's response dated May 15, 2009 to the Customer's April 13, 2009 letter rejecting the complaint; Customer's New Account Application and Agreement with Respondent; Customer's Contract Acknowledgement and Delivery Statement with ING; Customer's ING GoldenSelect Deferred Variable Annuity Application; ING's notice to the Customer of Important Information Regarding Your Variable Annuity Purchase; Claimant's Consolidated Allocation Analyses for the Customer dated June 6, 2008; and Claimant's testimony during the expungement hearing.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

AWARD

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

1. Claimant's request for \$1.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to occurrence number [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, 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:

In a letter dated April 13, 2009 to Respondent, the Customer complained that her former investment advisor, Claimant, had recommended that she purchase variable annuities which she claimed were unsuitable for her. Respondent investigated the Underlying Claim and concluded that it was utterly lacking in merit as thoroughly explained in Respondent's response letter to the Customer dated May 15, 2009. The Arbitrator agrees with Respondent's findings. The variable annuities recommended by Claimant provided not only potential gains from increases in the value of the investment portfolio within each annuity, but also a guaranteed lifetime income even if the value of the portfolios declined. This met the Customer's documented goals to a "T." Accordingly, the Underlying Claim was clearly erroneous and false.

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, Respondent 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: August 14, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: October 2, 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

Mark R. Lee

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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



Mark R. Lee
Sole Public Arbitrator

10/16/18

Signature Date

October 17, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)