Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant [redacted]

Case Number: [redacted]

vs.

Respondents
FSC Securities Corporation
National Planning Corporation

Hearing Site: New Orleans, Louisiana

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [redacted] ("Claimant"): Dochtor Kennedy, J.D. and MBA, and Christopher Cummins, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent FSC Securities Corporation ("FSC"): Bradley A. Fishman, Esq., FSC Securities Corporation, Jersey City, New Jersey.

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

Hereinafter, RSC and NPC are collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: May 1, 2018.
Claimant signed the Submission Agreement: May 1, 2018.

Statement of Answer filed by FSC on or about: May 9, 2018.
FSC signed the Submission Agreement: May 9, 2018.

Statement of Answer filed by NPC on or about: June 6, 2018.
NPC signed the Submission Agreement: May 7, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of four customer disputes ("Underlying Claims") from his Central Registration Depository ("CRD") records: two customer

complaints, occurrence numbers [redacted] and [redacted]; a NASD Arbitration, occurrence number [redacted] and a FINRA Arbitration, occurrence number [redacted].

In its Statement of Answer, FSC advised that it will not oppose Claimant's request for expungement and asserted various affirmative defenses.

In its Statement of Answer, NPC advised that it takes no position on Claimant's request for expungement.

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 claim, allegation, 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 claim, allegation, or information is false;
3. Damages in the amount of $1.00 from Respondents; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In their Statements of Answer, neither FSC nor NPC set forth a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 12, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on: the customers in occurrence number [redacted] ("Mr. and Mrs. D"); and the customer in occurrence number [redacted] ("Mr. S").

On October 1, 2018, Claimant provided notice that the Statement of Claim and notice of the expungement hearing had been served on: the customer in occurrence number [redacted] ("Ms. P"); and the customer in occurrence number [redacted] ("Mr. C").

Hereinafter, Mr. and Mrs. D, Mr. S, Ms. P, and Mr. C are collectively referred to as the "Customers."

On October 3, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel advising that Mr. and Mrs. D and Mr. S had been served with a copy of the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on October 12, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents did not participate in the expungement hearing and, as stated in their Statements of Answer, did not contest the request for expungement. The Arbitrator found that proof of notice to the Customers was filed and although duly notified, none of the Customers participated in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

On October 12, 2018, after the expungement hearing, Claimant filed an Affidavit signed by Claimant's counsel, advising that Claimant did not have a copy of the settlement agreement in occurrence number [redacted] and that FSC had confirmed in writing that the settlement agreement with Mr. C was not in their possession, custody, or control, and could not be located following a good-faith search of their system ("Claimant's Settlement Agreement Affidavit").

The Arbitrator could not review the settlement documents in occurrence number [redacted]. The Arbitrator found that despite diligent efforts, Claimant was unable to obtain a copy of the settlement agreement with respect to Mr. C's claim as explained in Claimant's Settlement Agreement Affidavit but Claimant testified that Mr. C's settlement agreement was virtually the same as Mr. S' settlement agreement in occurrence number [redacted] The Arbitrator reviewed the settlement documents in occurrence number [redacted] (which was signed by Respondent only) as the settlement document for both occurrences. Based on that document and Claimant's testimony, the Arbitrator considered the amount of payments made to any party and noted that the payment was only a fraction of the amount sought in the claims. The Arbitrator considered other relevant terms and conditions of the settlement and Arbitrator noted that the settlements were not conditioned on Mr. C and Mr. S not opposing the request for expungement. The Arbitrator also noted that Claimant did not contribute to the settlement amount and that Claimant did not want to settle because of the falsity of the claim.

The Arbitrator noted that occurrence numbers [redacted] and [redacted] were not settled and therefore there were no settlement documents to review.

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: pleadings and exhibits; Claimant's testimony; BrokerCheck® Report; Claimant's Settlement Agreement Affidavit; and proof of notice to Customers.

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 to the Underlying Claims, occurrence numbers [redacted], [redacted], [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 factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

Claimant gave sound advice and made all disclosures to the Customers; the Customers understood and chose suitable investments; Claimant acted in a thorough, ethical and professional manner in dealing with the Customers; and the Customers' claims and allegations are factually impossible or clearly erroneous and false as more fully described below. Moreover, the Underlying Claims, if not expunged, will mislead persons reviewing the Claimant's CRD record and will not provide valuable information for knowledgeable decision making.

Occurrence Number [redacted] (in which Mr. and Mrs. D were the customers)

Mr. and Mrs. D became clients of Claimant in late 2000 or early 2001. Claimant had numerous meetings with Mr. and Mrs. D, explaining various investment options and details of all recommendations and they chose an Equitable Life variable annuity. In November 2001, Claimant transferred his registration from FSC to NPC, at which time Mr. and Mrs. D received an account transfer form from Equitable Life. Claimant advised Mr. and Mrs. D that he would not be able to access their account until they signed and returned the transfer forms to Equitable Life. Mrs. D told Claimant she and Mr. D had found a certified financial planner to handle their account and that she and Mr. D wanted their funds returned. Claimant learned Mr. and Mrs. D had applied to American Express to replace their annuity with another annuity. On February 5, 2003, Mr. and Mrs. D complained to FSC questioning the suitability of annuities sold to them and stating that adequate disclosures were not made. FSC denied the claim, finding no basis and pointing out several inconsistencies in statements made by Mr. and Mrs. D: at one point they alleged they wanted to roll money into only an individual retirement account ("IRA") and, at another point, they acknowledged, "we understood that we were buying an annuity." Mr. and Mrs. D did not pursue their claims in arbitration or court.

The evidence persuades the undersigned Arbitrator that Claimant made a suitable recommendation to Mr. and Mrs. D and provided full disclosure; and that

they understood what they had chosen but later changed their mind. Their allegations are not supported by the evidence.

Occurrence Number [redacted] (in which Mr. S was the customer)

Mr. S was retiring from Halliburton when he was only 51 years old. Claimant met with Mr. S to identify an appropriate Personal Investment Profile for Mr. S. Claimant explained various investment options and details of all recommendations, including tax implications of three possible methods by which Mr. S could withdraw funds for expenses. These matters were discussed during numerous conversations including a meeting with Mr. S and his son-in-law, who was an accountant, on September 29, 1999.

Based on Mr. S' investor profile including what he required for monthly living expenses, Claimant recommended that he invest in a growth portfolio and, based on consideration and discussion of various investments and applicable percentage rates, Mr. S opted to roll over his IRA into an Equitable Life variable annuity, a decision supported by Mr. S' son-in-law. Claimant provided Mr. S with all appropriate information, documents and disclosures concerning the annuity. He later recommended that Mr. S lower his distribution rate to 5% to keep the living benefit at approximately the level of his initial investment of $472,000.00 and explained why, but Mr. S declined to follow Claimant's recommendation.

Mr. S closely monitored the annuity and directed reallocations at times, including after the September 11, 2001 terrorist attacks. Claimant stayed in contact with Mr. S and contacted the Internal Revenue Service ("IRS") regarding the difficulty many retirees, such as Mr. S, were facing due to declining financial markets and the IRS allowing retirees to withdraw too much money from their IRAs. Claimant was told there would soon be a change to the Internal Revenue Code Rule 72(t) ("Rule 72(t)") distribution rates and he relayed this information to Mr. S. When the IRS change was implemented, Claimant informed Mr. S that he could now lower his rate of withdrawal to prevent depletion of funds. Claimant also told Mr. S it was imperative that he return to work until the financial markets improved. Mr. S told Claimant he would get back to him with his decision at a later date but he did not do so, despite numerous inquiries by Claimant. In December 2003, Mr. S contacted Claimant and advised him to change his distribution; he reduced his monthly withdrawal and eventually returned to work. In December 2004, Mr. S filed for arbitration alleging "unsuitable investments" and seeking damages of approximately $164,000.00. The matter was settled for $22,500.00 and Claimant did not contribute to the settlement.

The evidence persuades the undersigned Arbitrator that Claimant made a suitable recommendation to Mr. S and provided full disclosure as well as ongoing advice; that Mr. S understood what he had chosen and closely monitored the annuity, even directing some reallocations; that circumstances changed considerably due to losses in the financial markets before and after September 11, and that, although Claimant advised Mr. S of prudent ways to proceed until the markets recovered, Mr. S either failed to follow through on Claimant's

recommendations or delayed in making a decision. Mr. S' later allegations against Claimant are not supported by the evidence.

Occurrence Number [redacted] (in which Mr. C was the customer)

Claimant met Mr. C in July 1999 and introduced himself as an independent investment executive. Mr. C stated he was earning a guaranteed ten percent return on his investments and did not need Claimant's services. In October 2000, Mr. C contacted Claimant and set up an appointment to discuss rolling over his 401K from Halliburton, his former employer, which contained about $538,000.00. Claimant met with Mr. C and his wife, Mrs. C, and discussed, in part, Mr. C's options for investing funds in his 401(k). Claimant advised Mr. C that if he rolled it into an IRA, distributions would be governed by Rule 72(t) and could not be changed for 5 years. Mr. C stated he required monthly distributions at a rate of 10% and Claimant told him that was very high. Claimant explained variable annuities to Mr. C and told him that if Mr. C had a distribution rate of 5% he would still have a benefit base providing him with lifetime income in the approximate amount of his initial investment. Mr. C and Claimant discussed different types of investments, and that Mr. C would have to be invested in a growth portfolio with equity mutual funds to keep pace with his withdrawals; Mr. C stated he understood the risks associated with that investment strategy and signed a new account form stating he understood he would be investing in a growth portfolio. On or about October 17, 2000, Mr. C authorized and directed that his Halliburton 401(k) be rolled over to purchase two Equitable Life Accumulator variable annuities for a total investment of $536,651.29.

In January 2001, Mr. and Mrs. C and their housemate, Mr. R – with whom they shared expenses – contacted Claimant about a letter received from Evergreen Securities, LTD with whom Mrs. C and Mr. R had invested funds. Evergreen was based out of the Bahamas and Costa Rica and, as Claimant informed them during their initial meeting, he had never heard of it. The letter was a notice of bankruptcy. Claimant repeatedly attempted to contact Evergreen to find out what had become of Mrs. C's and Mr. R's investments but was unsuccessful. He later learned that Evergreen was a Ponzi scheme and that Mrs. C and Mr. R had lost their entire investments. This meant that all of them would be living solely on Mr. C's income and that they would have to cut back on expenses.

Following the September 11 attacks Claimant discussed the declining market with Mr. and Mrs. C and Mr. R and recommended that Mr. C's annuities be reallocated into bonds. Mr. C agreed and authorized that reallocation, as well as several others during the spring of 2002. In June 2002, Claimant met with Mr. and Mrs. C to discuss the consequences of the market decline and Mr. C's continued 10% withdrawal rate. Claimant explained he had spoken to the IRS and learned a new rule change was forthcoming that would allow Mr. C to substantially reduce his distribution rate. Claimant advised Mr. C that it was imperative he reduce considerably his distribution rate as soon as the rule change was implemented, in order to preserve his benefit base for his lifetime income and principal.

On October 3, 2002, Claimant informed Mr. C the rule change was in effect and he could now reduce his withdrawal rate. Mr. C, who had returned to work at Halliburton, declined to do so. Claimant repeated this advice to Mr. C during telephone calls and meetings, but Mr. C continued to decline Claimant's advice and transferred his account – the value of which now was $173,167.00 -- to Hibernia Corporation in February 2003. Even after the transfer, Claimant contacted Mr. C and stressed the importance of reducing his withdrawal rate to prevent depletion of his assets including his living benefit. In late January 2005, Mr. C filed for arbitration alleging that Claimant had invested him in unsuitable variable annuities and seeking $189,000.00 in damages. The matter was settled for $17,500.00. Claimant did not contribute to the settlement.

The evidence demonstrates that Claimant made a suitable recommendation to Mr. C and provided full disclosure as well as ongoing advice, much of which Mr. C ignored; that Mr. C understood what he had chosen and monitored the annuity, directing some reallocations; that circumstances changed considerably due to losses in the financial markets before and after September 11 as well as the loss of Mrs. C and Mr. R's funds with Evergreen; and that although Claimant repeatedly advised Mr. C of how he could prevent depletion of his assets, Mr. C failed to follow through on Claimant's recommendations. Mr. C's allegations against Claimant are not supported by the evidence.

Occurrence Number [redacted] (in which Ms. P was the customer)

Ms. P became a customer of Claimant in the early 2000s. Through detailed conversations, Claimant ascertained her investment objectives, risk tolerance, liquidity needs and investment time horizon. Based on Ms. P's stated investor profile, Claimant discussed various options including costs, risks, terms, advantages and disadvantages of each. One option Claimant recommended was an Equitable Life variable annuity.

In or around late 2006, Ms. P authorized and directed the purchase of the variable annuity. Claimant provided her all required disclosures, including all information regarding surrender charges associated with the variable annuity, and paperwork which she signed indicating she understood and approved of the investment. Approximately a year later, Ms. P's real estate business suffered a decline and she needed funds. Claimant discussed with Ms. P her options for taking distributions from the variable annuity.

Ms. P asked Claimant to reimburse her for the surrender penalty she would incur, and he told her he was unable to do so reminding her they had discussed the surrender penalty as well as the benefits of the annuity. Ms. P sent a demand letter to NPC seeking $8,400.00 in damages and alleging she had not signed any paperwork stating there were surrender charges. Her demand letter was reported to Claimant's CRD record as an unsuitable investment. Following a full investigation, NPC denied Ms. P's claim, finding no basis to it. Ms. P did not pursue her claim in arbitration or in court.

The evidence demonstrates that Claimant made a suitable recommendation to Ms. P and provided full disclosure. Ms. P's allegations against Claimant are not supported by the evidence.

2. Claimant's request for $1.00 of damages against Respondent 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

**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, FSC is assessed the following:

Member Surcharge =$ 150.00

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

Member Surcharge =$ 150.00

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 15, 2018 1 session

One (1) hearing session on expungement request @ $50.00/session =$50.00
Hearing Date: October 12, 2018 1 session

Total Hearing Session Fees =$100.00

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

Lynne M. Gomez - 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

Lynne M. Gomez
Sole Public Arbitrator

11-11-2018
Signature Date

November 12, 2018
Date of Service (For FINRA Office of Dispute Resolution office use only)