

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant

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Case Number: ██████████

vs.

Respondent

National Planning Corporation

Hearing Site: Indianapolis, Indiana

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, Esq. and Erica Harris, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent National Planning Corporation (“Respondent”): Scott R. Forbush, Esq., Jackson National Life Insurance Company, Lansing, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: October 11, 2017.  
Claimant signed the Submission Agreement: October 11, 2017.

Statement of Answer filed by Respondent on or about: December 18, 2017.  
Respondent signed the Submission Agreement: January 11, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint, Occurrence Number ██████████ (“Underlying Complaint”), from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number ██████████ from his CRD, \$1.00 in compensatory damages, and any and all other relief as the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that it not be required to enter a

formal appearance or participate further in the matter, except as specifically required by the Arbitrator.

On record at the hearing, Claimant withdrew his request for \$1.00 in compensatory damages.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On or about September 6, 2018, in compliance with the Arbitrator's Order dated May 14, 2018, Claimant filed a copy of the letter sent to the customer for the Underlying Complaint at the customer's last known address, providing the customer with the Statement of Claim, notice of the expungement hearing date and time, and the option to participate in the expungement hearing. On or about September 20, 2018, Claimant filed an Affidavit of Service for the letter sent to the customer.

The Arbitrator conducted a recorded, telephonic hearing on October 9, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing. The Arbitrator took judicial notice that the customer is deceased and therefore could not participate in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Claimant and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. A review of the record shows that the parties settled the underlying complaint with a condition that the customer not oppose or object to Claimant's request to expunge the record of the complaint from CRD. The Arbitrator noted that FINRA Rule 2081 prohibits such conditional settlements. However, the settlement was dated November 29, 2012, prior to the effective date of Rule 2081 on July 30, 2014. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

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: the Statement of Claim and Statement of Answer and Affirmative Defenses from the underlying complaint, the settlement agreement between Respondent and the customer's heirs, the customer's account information, and a memoranda signed by the customer.

### **AWARD**

After considering the pleadings, the testimony, and the 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 the 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 (the "Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

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

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

The entry in Claimant's CRD record is the result of a settlement between Respondent only and the heirs of Claimant's customer. Claimant was not a party to the settlement. Claimant credibly testified that the customer, who was fully competent at the relevant time, was fully informed, in agreement with, and completely satisfied with Claimant's recommendations of the products in dispute. In June 2011, the customer became terminally ill and her son became involved in her portfolio and raised questions over the products in dispute. The claim was brought in customer's name in October 2011, several months before her death. In the settlement agreement, in which Claimant was neither involved nor contributed, the heirs released and discharged Respondent and Claimant.

2. 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 150.00

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

August 9, 2018, postponement requested by Claimant. = \$ 50.00

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Total Postponements Fees = WAIVED

**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:

Two (2) pre-hearing sessions with a single arbitrator @ \$50.00/session = \$ 100.00  
Pre-hearing conferences: February 16, 2018 1 session  
May 14, 2018 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: October 9, 2018 1 session

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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**

Charles Orlove

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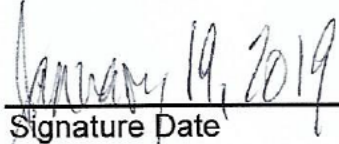
Sole Public Arbitrator

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**



Charles Orlove  
Sole Public Arbitrator



Signature Date

January 22, 2019

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