

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

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

vs.

Respondent

Hearing Site: Tampa, Florida

LPL Financial LLC

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Harris M. Freedman, Esq., HLBS Law, Westminster, Colorado.

For Respondent LPL Financial LLC ("Respondent"): Brian P. Harlan, Esq., LPL Financial LLC, San Diego, California.

**CASE INFORMATION**

Statement of Claim filed on or about: January 4, 2019.  
Amended Statement of Claim filed on or about: March 11, 2019.  
Claimant signed the Submission Agreement: January 4, 2019.

Statement of Answer filed on or about: February 26, 2019.  
Respondent signed the Submission Agreement: February 28, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Respondent stated that it did not oppose Claimant's request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of Occurrence Number [REDACTED] \$1.00 in compensatory damages, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that an award be entered

dismissing any and all allegations of wrongdoing against Respondent and denying any and all requests for damages, costs, or fees.

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

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

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On or about May 16, 2019, Claimant submitted a copy of the notice sent to the customer related to Occurrence Number [REDACTED] which included a copy of the Amended Statement of Claim, the expungement hearing date and time, and advised the Customer of her opportunity to participate in the expungement hearing.

On or about May 24, 2019, Claimant submitted an Affidavit of Service.

The Arbitrator conducted a recorded, telephonic hearing on June 20, 2019, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing but did not contest Claimant's request for expungement. The customer did not participate in the expungement hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator noted that there was not a settlement with respect to Occurrence Number [REDACTED]. Therefore, there were no settlement documents to review in this matter.

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

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's BrokerCheck® Report and Claimant's Exhibits 1-10.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and the post-hearing submission, 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 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:

I found that no evidence supporting the customer’s underlying complaint was presented. The customer’s attorney’s letter, dated November 29, 2010, is the sole evidence supporting the customer’s claim. I find that this letter states an attorney’s position for a client which, without testimony of the client (the customer), would be inadmissible at a hearing. Further, based on Claimant’s testimony at the hearing, I found Claimant’s explanation of his advice to the customer to be credible regarding the various characteristics of the underlying annuity investments, which the customer purchased with full knowledge, as evidenced by her signature on the sales documents.

2. Any and all claims for relief not specifically addressed herein, are denied.
3. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.

### **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 @ \$50.00/session = \$ 50.00

Pre-hearing conference: April 23, 2019 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00

Hearing Date: June 20, 2019 1 session

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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**

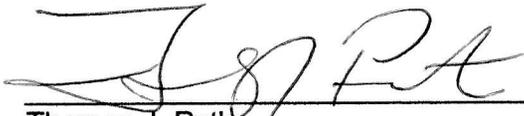
Thomas J. Patka

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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**



Thomas J. Patka  
Sole Public Arbitrator

7/7/2019  
Signature Date

July 8, 2019

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