

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Morgan Keegan & Company, LLC

Hearing Site: New Orleans, Louisiana

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Morgan Keegan & Company, LLC (“Respondent”): Brandy Pikus, Esq., Raymond James & Associates, Inc., St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 8, 2018.  
Claimant signed the Submission Agreement: May 8, 2018.

Statement of Answer filed by Non-party Raymond James & Associates (“Raymond James”) on or about: June 12, 2018.  
Raymond James signed the Submission Agreement: June 11, 2018.

**CASE SUMMARY**

Claimant asserted a claim seeking expungement of a customer complaint, occurrence number ██████████ (“Underlying Complaint”) from his Central Registration Depository (“CRD”) record.

In the Statement of Answer, Raymond James advised that it does not oppose Claimant’s request for expungement and would not participate in this matter any further.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaint from his CRD record pursuant to

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

In the Statement of Answer, Raymond James did not set forth a specific relief request.

At the expungement 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.

Respondent did not file with FINRA Office of Dispute Resolution a properly executed Submission Agreement but 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. In the Statement of Answer, Raymond James advised that it acquired Respondent on April 2, 2012, and completed its merger of Respondent's business operations into its own in February 2013. The Arbitrator found that Raymond James answered on behalf of Respondent.

On October 1, 2018, Claimant provided notice that the customer in the Underlying Complaint ("Customer") was served with a copy of the Statement of Claim and notice of the expungement hearing.

On October 17, 2018, Claimant submitted an Affidavit of Service signed by Claimant's counsel, advising that the Customer had been served with the Statement of Claim.

The Arbitrator conducted a recorded telephonic hearing on November 2, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement.

Neither Raymond James nor Respondent appeared at the expungement hearing and, as stated in the Statement of Answer, did not oppose Claimant's request for expungement. The Customer also did not appear at the expungement hearing. The Arbitrator found that the Customer was notified on October 1, 2018, but did not respond.

The Arbitrator reviewed Claimant's BrokerCheck® Report.

The Arbitrator also reviewed the signed General Release between the Customer and Raymond James ("General Release"), but did not consider the amount paid in relation to the determination whether or not expungement should be granted. The General Release was executed without Claimant's input and contrary to his wishes. The Arbitrator noted that the General Release was not conditioned on the Customer not opposing the request for expungement. The Arbitrator also noted that Claimant did not

contribute to the settlement amount. The Arbitrator also noted that Raymond James paid the settlement amount to the Customer after Claimant's employment with Respondent ceased.

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: Claimant's testimony and the following Hearing Exhibits: Customer's complaint to Raymond James – Exhibit 7; Raymond James' conclusions following investigation – Exhibit 9; and the General Release – Exhibit 10.

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, 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is false.

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

1. The evidence shows that the annuity at issue was purchased by the Customer prior to her relationship with Claimant.
2. The Customer directed the liquidation of the annuity against the repeated advice of Claimant.
3. Any surrender of the annuity would have carried tax consequences regardless of when the surrender occurred because the annuity was a tax deferred holding and not tax free.

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(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 23, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: November 2, 2018	1 session

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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**

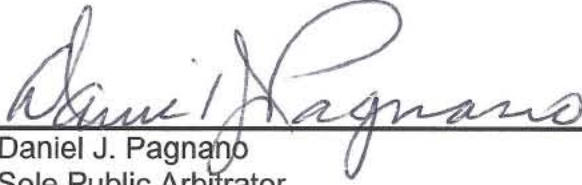
Daniel J. Pagnano

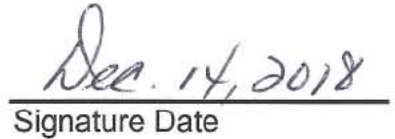
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Sole Public Arbitrator

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**

  
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Daniel J. Pagnano  
Sole Public Arbitrator

  
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Signature Date

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