

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

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In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number: [REDACTED]

vs.

Respondent

LPL Financial LLC

Hearing Site: San Francisco, California

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Frances Menzer, J.D., HLBS Law, Westminster, Colorado.

For Respondent LPL Financial LLC ("Respondent"): Thomas F. Barnett, Esq., Vice President and Assistant General Counsel, LPL Financial LLC, Boston, Massachusetts.

**CASE INFORMATION**

Statement of Claim filed on or about: November 13, 2018.

Claimant signed the Submission Agreement: November 13, 2018.

Statement of Answer filed by Respondent on or about: February 13, 2019.

Respondent signed the Submission Agreement: February 13, 2019.

**CASE SUMMARY**

Claimant asserted a claim requesting expungement of a termination disclosure on his Form U5 filed by Respondent, reflected on Claimant's Central Registration Depository ("CRD") records. Claimant alleged that the termination disclosure at issue was defamatory in nature.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Form U5 amendments, and those relevant portions of the

Form U4, from Claimant's CRD record on the basis that the statement is defamatory in nature, misleading, inaccurate, and/or erroneous, to include an amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary;" subsequent expungement of the Reason for Termination explanation on Claimant's CRD; expungement of the "Yes" answer to Question 7F(1) of Claimant's Form U5, amending that "Yes" response to "No;" and a deletion of any of the accompanying Internal Review and Termination Disclosure Reporting Pages in their entirety;

2. Damages in the amount of \$1.00 from Respondent for its part in contributing to the Claimant's injury; and
3. Any other relief as the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Dismissal of any and all allegations of wrongdoing against Respondent;
2. Denial of any and all requests for damages, costs, and/or fees against Respondent;
3. Costs and expenses; and
4. Such other relief as the Panel may deem appropriate.

At the hearing, Claimant withdrew his request for \$1.00 in damages from Respondent.

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

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

At the conclusion of the evidentiary hearing the Arbitrator allowed time for the parties to meet and confer about potentially submitting a joint proposed order regarding the expungement request.

On August 14, 2019, the parties filed a Joint Proposed Order regarding the expungement request as follows:

1. Expungement of the "Yes" answer to Question 7F(1) from Claimant's Form U5, amending that "Yes" answer to "No";
2. Expungement of the "Yes" answer to Question 14J(1) from Claimant's Form U4, amending that "Yes" answer to "No";
3. Deletion of the accompanying Internal Review and Termination Disclosure Reporting Pages in their entirety;
4. Amendment of the termination explanation in Section 3 of Claimant's Form U5 to read as follows: "Management concerns regarding potentially unsuitable options recommendations. No customer complaints were received."

By Order dated August 15, 2019, the Arbitrator requested that the parties provide copies of the disclosure reporting pages referenced in their August 14 Joint Proposed Order.

On August 21, 2019, Claimant filed the requested CRD records as well as a Revised Joint Proposed Order as follows:

1. Expungement of the "Yes" answer to Question 7F(1) from Claimant's Form U5, amending that "Yes" answer to "No";
2. Expungement of the "Yes" answer to Question 14J(1) from Claimant's Form U4, amending that "Yes" answer to "No";
3. Deletion of the accompanying Termination Disclosure Reporting Pages in their entirety;
4. Amendment of the termination explanation in Section 3 of Claimant's Form U5 to read as follows: "Management concerns regarding potentially unsuitable options recommendations. No customer complaints were received."

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 the Reason for Termination and Termination Explanation in Section 3 of Claimant [REDACTED] (CRD# [REDACTED] Form U5 filed by LPL Financial LLC (CRD# 6413) on November 9, 2016 and maintained by the CRD. The Reason for Termination should be changed to "Other." The Termination Explanation should be replaced with: "Management concerns regarding potentially unsuitable options recommendations. No customer complaints were received."

In addition, the Arbitrator recommends that the "Yes" answer to Question 7F(1) on the Amended Form U5 filed by LPL Financial LLC on March 21, 2017 be changed to "No" and the accompanying Termination Disclosure Reporting Page be deleted in its entirety.

In addition, the Arbitrator recommends that the "Yes" answer to Question 14J(1) of the Amended Form U4 filed by Mutual Securities, Inc. (CRD# 13092) on March 24, 2017 be changed to "No" and the accompanying Termination Disclosure Reporting Page be deleted in its entirety.

These recommendations shall apply to all subsequent disclosures concerning this event.

These recommendations are made with the understanding that, Claimant [REDACTED] must obtain confirmation of this award from a court of competent jurisdiction before the CRD will execute the expungement directive. The registration records are not automatically amended to include the changes indicated above. Claimant [REDACTED] must forward a copy of the Court Order to FINRA's Registration and Disclosure Department for the amendments to be incorporated into the registration records.

2. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, 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: March 25, 2019	1 session

One (1) hearing session @ \$50.00/session	= \$50.00
Hearing Date: July 9, 2019	1 session

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Total Hearing Session Fees	= \$100.00
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The Arbitrator has assessed \$50.00 of the hearing session fees to Claimant.  
The Arbitrator has assessed \$50.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

David I. Levine

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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**



David I. Levine  
Sole Public Arbitrator

8/23/19  
Signature Date

August 23, 2019  
Date of Service (For FINRA Office of Dispute Resolution office use only)