

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

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In the Matter of the Arbitration Between:

Claimant

Case Number: [REDACTED]

[REDACTED]

vs.

Respondent

Hearing Site: Jacksonville, Florida

Raymond James Financial Services, Inc.

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED] ("Claimant"): Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado and Armin Sarabi, Esq., HLBS Law, Westminster, Colorado.

For Respondent Raymond James Financial Services, Inc. ("Respondent"): Brandy Pikus Esq., Raymond James Financial Services, Inc., St. Petersburg, Florida.

**CASE INFORMATION**

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

Statement of Answer filed by Respondents on or about: April 11, 2018.  
Respondent signed the Submission Agreement: March 13, 2018.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of a customer complaint, Occurrence Number [REDACTED] from her registration records maintained by the Central Registration Depository ("CRD").

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

**RELIEF REQUESTED**

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

In the Statement of Answer, Respondent did not request any relief.

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

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

On or about October 4, 2018, in compliance with the Initial Pre-Hearing Conference Order, Claimant filed a copy of the letters sent to the customers, a husband and wife, (the "Customers" or "Mr. D" and "Mrs. D") for Occurrence Number [REDACTED] providing the Customers 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 October 15, 2018, Claimant filed an Affidavit of Service for the letters sent to the Customers.

The Arbitrator conducted a recorded, telephonic hearing on November 6, 2018, so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent did not participate in the expungement hearing. Mr. D participated in the expungement hearing and contested the request for expungement. Mrs. D did 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. The Arbitrator noted that the settlement was not conditioned on the Customers not opposing the request for expungement. 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: testimony of Claimant; testimony of Mr. D; Exhibits 1 and 2 of the Statement of Claim; all exhibits in the Claimant's Submission of Expungement Hearing Exhibits, particularly Exhibits 2 through 4 and 8 through 14; and the settlement agreement and general release dated August 21, 2017.

### **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 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 findings of fact:

- The claim, allegation, or information is factually impossible or clearly erroneous; and
- The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and
- The claim, allegation, or information is false.

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

It is clear from nearly four hours of testimony from Claimant and Mr. D., that the gravamen of the underlying claim, which resulted in arbitration (the "Underlying Arbitration"), was twofold. The first issue involved accounting and legal fees incurred by the Customers due to contact between Claimant, the Customers' accountant (the "CPA"), and the Customers' attorney (the "Attorney"), as part of the restructuring of the Customers' accounts and the dissolution of a limited liability company (the "LLC") that initially held the investments. The second issue was related to the tax consequences and legal effect of the dissolution of the LLC.

Exhibit 5 reflects invoices from the CPA, which extended for six months. It also reflects communications between Claimant, Attorney, and Mr. D. There is no entry reflecting that the Customers did not approve conversations with Claimant. The Customers paid the invoices. Exhibits 6 and 7 reflect the invoices from Attorney for August and September, 2014, which refer to conversations with Claimant and the CPA. The Attorney invoices were paid.

I find no wrongdoing on the part of Claimant in speaking with the CPA and Attorney, who were necessary to provide professional advice for the anticipated dissolution of the LLC and investment restructuring. Any dispute the Customers had with the CPA or the Attorney as to the scope of their activities and their invoices was between the Customers and the professionals providing the services. No objection was ever made to them by the Customers, who, in fact, paid the invoices. Any issue as to the fees is clearly erroneous, not in violation any investment-related sales practices, and false.

In light of the evidence presented, it is my finding that the advice, consultation and efforts of Claimant to seek outside legal and accounting advice related to the dissolution of the LLC and consequences thereof were to be commended, not sanctioned. Had the Claimant not sought advice for the specialty areas outside of her expertise, the error would have been hers. Although there was a piece of correspondence suggesting her advice as to the tax issues, it has to be read in context. The context was associated with the discussions and input from the applicable tax and legal professionals which led to the final decision of the Customers to dissolve their LLC. This was done also to meet the Customers' investment objectives. Any issue as to the LLC dissolution is clearly erroneous, not in violation any investment-related sales practices and false.

Expunging the CRD record of Claimant will have no material, adverse effect on investor protection or regulatory value.

I reviewed the documentary evidence submitted and the testimony presented and find that any claims, allegations, or information made in the Underlying Arbitration, as to a failure to disclose 529 Plan fees, management fees, unsuitability, negligence, breach of fiduciary duty, misrepresentations and breach of contract are clearly erroneous, not in violation of investment-related sales practices, and false.

2. Claimant's claim for \$1.00 in compensatory damages 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
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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
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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:



**ARBITRATOR**

John P. Cullem

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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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John P. Cullem  
Sole Public Arbitrator

12/10/2018

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Signature Date

December 10, 2018

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