

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number: [REDACTED]

vs.

Respondents

LPL Financial LLC

Prospera Financial Services, Inc.

VSR Financial Services, Inc.

Hearing Site: Boise, Idaho

Nature of the Dispute: Associated Person vs. Members

REPRESENTATION OF PARTIES

For Claimant [REDACTED] ("Claimant"): Erica Harris, Esq. and Docthor Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

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

For Respondent Prospera Financial Services, Inc. ("Prospera"): William M. Schmitt, Esq., Prospera Financial Services, Inc., Dallas, Texas.

For Respondent VSR Financial Services, Inc. ("VSR"): Jeremy Carr, Esq., Cetera Financial Group, El Segundo, California.

Hereinafter, LPL, Prospera, and VSR are collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: June 21, 2018.

Claimant signed the Submission Agreement: June 21, 2018.

Statement of Answer filed by Prospera on or about: July 18, 2018.

Prospera signed the Submission Agreement: July 17, 2018.

Statement of Answer filed by VSR on or about: July 31, 2018.

VSR signed the Submission Agreement: August 3, 2018.

Statement of Answer filed by LPL on or about: August 27, 2018.
LPL signed the Submission Agreement: August 28, 2018.

CASE SUMMARY

Claimant asserted a claim seeking expungement of three FINRA arbitration cases, occurrence numbers [REDACTED], [REDACTED] and [REDACTED] ("Underlying Arbitrations") from his Central Registration Depository ("CRD") records.

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

In its Statement of Answer, VSR advised that it does not oppose Claimant's request for expungement and will defer to the Arbitrator's findings.

In its Statement of Answer, LPL advised that it neither supports nor opposes Claimant's request for expungement, but denied any wrongdoing alleged against LPL.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

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

In the Statement of Answer, Prospera requested:

1. Any claims seeking recovery from Prospera be denied in their entirety with prejudice;
2. Claimant bear all costs and assessments by FINRA; and
3. Such other relief to which Prospera might be entitled.

In the Statement of Answer, VSR requested:

1. A statement from the Arbitrator on the issue of whether to order recommending the Underlying Arbitrations be expunged from Claimant's CRD records in the form required by FINRA Rule 2080;
2. Denial of Claimant's request for \$1.00 in damages; and
3. All forum costs and fees be assessed against Claimant.

In the Statement of Answer, LPL requested that any monetary relief be denied.

At the hearing, Claimant withdrew his request for \$1.00 of damages against Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

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

By Order dated November 1, 2018, the Arbitrator ordered Claimant to provide written notice to the customers in the Underlying Arbitrations and to the extent that the customers were represented by counsel in the Underlying Arbitrations, provide a copy of the written notice to the customers' counsel of record. The Arbitrator further ordered that the written notice include: (1) a copy of the Statement of Claim; (2) an explanation of the nature of expungement; (3) an explanation of the customers' right to participate in this matter; and (4) contact information for the FINRA Case Administrator.

On December 31, 2018, Claimant provided notice that the following customers had been served with correspondence as required by the November 1 Order: the customer in occurrence number [REDACTED] ("Ms. R"); the customers in occurrence number [REDACTED] ("Mr. T" and "Mr. and Mrs. C"); and the customers in occurrence number [REDACTED] ("Mr. and Mrs. D").

Hereinafter, Ms. R, Mr. T, Mr. and Mrs. C, and Mr. and Mrs. D are collectively referred to as the "Customers."

On the same date, Claimant also provided notice that a copies of the correspondence to the Customers had also been served on each of the customers' counsel of record in the Underlying Arbitrations.

On January 8, 2019, Claimant filed an Affidavit of Service signed by Claimant's counsel, advising that copies of the Statement of Claim had been served on the Customers and their counsel of record in the Underlying Arbitrations.

On January 17, 2019, counsel for Mr. T and Mr. C, submitted emails to be forwarded to the Arbitrator requesting: the Arbitrator's name and arbitrator disclosure report; copies of the orders issued in this matter; that Claimant be ordered to provide counsel all pleadings in this matter as well as any correspondence between the Arbitrator and the parties; the name and email address of all counsel in this matter; access to the FINRA Portal for this case; and to hold this matter in abeyance until the foregoing has been accomplished. Mr. T and Mr. C's counsel also submitted a further email regarding a telephone conversation he had with Claimant's counsel.

On the same date, Claimant's counsel submitted a response to the emails advising that he "disagreed with many aspects of [Mr. T and Mr. C's counsel's] characterization of the conversation he and I had regarding the immediate matter..." but also advised that Claimant would comply with an order of the Arbitrator to provide additional documents to Mr. T and Mr. C's counsel.

By Order dated January 22, 2019, the Arbitrator ordered, among other things, that Claimant was to serve counsel for Mr. T and Mr. C. with the following: copies of all of

the pleadings and other materials filed with FINRA; and any new or additional pleadings filed on behalf of Claimant.

On January 23, 2019, counsel for Ms. R submitted an opposition to Claimant's expungement request.

On January 28, 2019, counsel for Ms. R and counsel for Mr. T and Mr. C, filed an opposition to Claimant's expungement request.

The Arbitrator conducted a recorded telephonic hearing on February 4, 2019. The Arbitrator noted that Prospera and LPL as well as counsel for Mr. T and Mr. C appeared on the call. Counsel for Mr. T and Mr. C advised that they also represented Ms. R at this hearing.

By Order issued on the same date, the Arbitrator ordered: that an additional expungement hearing would be held on March 11, 2019; Mr. T and Mr. C file the settlement agreement relating to occurrence [REDACTED] and that the Customers file a list of all witnesses they intended to call at the next hearing, as well as a copy of all exhibits they intended to offer into evidence. The Arbitrator also noted that Claimant made an oral motion for the next hearing session to be held in-person rather than via telephone and the Arbitrator advised that his ruling on said motion would be set forth in a subsequent order.

On February 5, 2019, Mr. D filed an opposition to Claimant's expungement request.

On February 15, 2019, Mr. T and Mr. C filed a Witness and Exhibit List; a Motion to Review Discovery and for a Televisual or Telephonic Hearing; and document production. By Order dated February 27, 2019, the Arbitrator granted Claimant's request for an in-person expungement hearing but advised that Respondents and the Customers had leave to appear by telephone or video conference. The Arbitrator also granted Mr. T and Mr. C's request to be provided with all discovery in this matter.

On March 7, 2019, Mr. T and Mr. C filed a Motion to Compel and for Sanctions. By Order of the same date, the Arbitrator advised that he would take up the motion at the expungement hearing scheduled for March 11, 2019.

The Arbitrator conducted a recorded in-person hearing on March 11, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement. The Arbitrator noted that LPL, Prospera, and counsel for Mr. T and Mr. C appeared telephonically.

LPL and Prospera participated in the expungement hearing and did not contest the request for expungement. VSR did not participate in the expungement hearing and did not contest the request for expungement, as stated in its Statement of Answer.

Mr. D participated in the expungement hearing and contested the request for expungement. Counsel for Mr. T and Mr. C participated in the expungement hearing and contested the request for expungement. Ms. R did not participate in the expungement

hearing and, as stated in her January 23 and 28 submissions, contested the request for expungement.

By Order dated March 12, 2019, the Arbitrator ordered that the parties or Customers may submit briefs on the following legal issues which arose during the course of the hearing:

1. The law applicable to the motion for sanctions by Mr. T and Mr. C;
2. The law applicable to the motion for sanctions by Mr. T and Mr. C for attorneys' fees and costs pursuant to the Idaho securities law; and
3. The application of statute of limitations and/or the doctrine of laches to bar Claimant's request for expungement.

Additionally, the Arbitrator gave all parties and the Customers leave to file a brief to discuss the application of the testimony adduced at the hearing and the admitted exhibits to the criteria for expungement.

On March 22, 2019, Mr. T and Mr. C filed their post-hearing brief. On April 1, 2019, LPL filed its post-hearing brief requesting that Mr. T and Mr. C's request for attorneys' fees and costs be denied. On the same date, Claimant submitted his post-hearing brief. On April 6, 2019, Mr. T and Mr. C filed a submission advising that they would not be filing a reply to Claimant's brief but would answer any of the Arbitrator's additional questions.

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

The Arbitrator reviewed the settlement documents for occurrence number [REDACTED] 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 disclosures in the CRD.

In recommending expungement of occurrence number [REDACTED] the Arbitrator relied upon the following documentary or other evidence: written settlement agreements in the Underlying Arbitrations; Claimant's testimony; and the hearing exhibits, including but not limited to: Exhibit 11 – the Statement of Claim and Exhibit 12 – Release and Settlement Agreement, both relating to the underlying arbitration in occurrence number [REDACTED]

The Arbitrator has provided an explanation of his decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The parties present at the hearing have agreed that a handwritten, signed Award may be entered.

FINDINGS

The Arbitrator has made the following findings:

Claimant argued that a customer is not authorized to present motions. I reject this argument as inconsistent with the rules, policy, and FINRA guidance on customer intervention in an expungement case.

The Arbitrator makes the following orders regarding the pending motions:

1. Mr. T and Mr. C's Motion for Sanctions: While there is some evidence of less than civil relations between counsel (which I do not condone), I find no evidence of any act on the part of either Claimant or Claimant's counsel sufficient to support an award of sanctions. Accordingly, the motion for monetary sanctions is denied.

2. Mr. T and Mr. C's Motion for Attorneys' Fees under the Idaho Securities Act: The action before me does not involve any aspect of Idaho law; and the attorneys' fee provision of the specific statute, Idaho Code Sec. 30-14-509, appears by its terms, and by Idaho case law, to be inapplicable. This claim arises under federal law and FINRA rules and is limited to the issue expungement of portions of Claimant's CRD records. Although Mr. T and Mr. C argue the Underlying Arbitrations arose in part under Idaho law, all of the claims for attorneys' fees under Idaho law were settled, terminated and resolved by the written settlement agreements in evidence. Accordingly, the motion for an award of attorney fees' is denied.

3. Mr. T and Mr. C's Motion for Dismissal of the Claim in this Case as Time Barred (Rule 13206 as to Ms. R and the equitable doctrine of laches as to the Underlying Arbitrations):

Based upon my review of the evidence, argument, and briefs, I find no basis for dismissal of any of the pending claims predicated on laches. Accordingly, the motion as to laches is denied.

Ms. R filed her claim against LPL, VSR and Claimant in 2011. Claimant appeared and answered the Statement of Claim through his prior attorney. The parties settled the case without a hearing by an agreement dated April 4, 2012, which was executed on behalf of Claimant by his attorney. The CRD submissions from LPL and VSR show a final disposition by settlement on April 4, 2012, and April 5, 2012, respectively and are consistent with the settlement agreement.

I hold that for purposes of most expungement claims, the six-year limitation period under Rule 13206 of the Code of Arbitration Procedure ("Code") starts on the date upon which the underlying arbitration case is terminated, whether by settlement or by an arbitral award.

Claimant filed his claim for expungement claim on or about June 21, 2018. At that time the six-year prescription period had expired prior as it is approximately six years and two months after Ms. R's claim was settled. Accordingly, the request for expungement of occurrence number [REDACTED] is denied, as time barred pursuant to FINRA Rule 13206.

The prescription period as to the remaining two claims clearly has not run and the motion as to Mr. T and Mr. C's claim and Mr. D's claim is denied.

The Arbitrator makes the following findings regarding occurrence number [REDACTED]

Based on the testimony of Claimant and Mr. D, including, but not limited to, the testimony about the non-liquidity of multiple investments, and the adjustments to Mr. D's balance sheet which qualified him for financially restricted investment vehicles, and a review of the pertinent exhibits, I cannot conclude that the allegations in the underlying arbitration filed by Mr. D, or the summary statements in the CRD records as they relate to Mr. D's claim are factually impossible, clearly erroneous or false. Therefore, the portion of the claim seeking a recommendation for expungement of Mr. D's claim is denied.

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. Claimant's request for expungement of occurrence number [REDACTED] from his CRD records is denied as it is time barred pursuant to Rule 13206 of the Code.
2. Claimant's request for expungement of occurrence number [REDACTED] from his CRD records is denied.
3. 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:

Mr. T and Mr. and Mrs. C jointly filed an arbitration claim against LPL (the "T/C arbitration"). Claimant was the account representative handling the accounts for

Mr. T and Mr. and Mrs. C, but he was not named as a respondent. The matter was settled without any contribution from Claimant. (Exhibit 12).

The T/C arbitration alleged that Claimant invited Mr. T, his wife and Mr. and Mrs. C to the same “chicken dinner” seminar; and provided them with the same unspecified “mass marketing” materials and the same “inappropriate recommendations” and that each purchased unspecified “unsuitable securities.” (Exhibit 11).

While the claims made in the T/C arbitration are rich in their clear exposition of the manner by which various state, federal and administrative securities’ laws and regulations can be violated, they are devoid of factual allegations about specific violations. Similarly, the settlement agreement, to which Claimant is not a party, settled various alleged but unspecified violations.

Although LPL, the named broker-dealer, who settled the arbitration is a party to this action and participated in all hearings, it offered no evidence of any nature concerning the underlying claims or the allegations in the T/C arbitration or of the justification or rationale for the settlement, taking the position that it neither supported nor opposed Claimant’s request for expungement.

Mr. T and Mr. C appeared in this matter through counsel, but offered no testimonial or documentary evidence of any nature. Consequently, there is no evidence before me of any specific wrongful act by Claimant. There are simply the naked allegations of the underlying arbitration that Claimant violated various securities laws without any factual support whatsoever, e.g., he is alleged to have sold some unidentified “unsuitable securities,” and an “unsuitable” real estate investment. What is missing is any evidence of the date of sale(s), the nature of any pre-sale representation(s), the performance of the purportedly unsuitable security(ies) or realty investment, or the damage(s), if any, incurred.

Simply put, the evidence before me consists exclusively of Claimant’s sworn testimony that he did not commit any of the various enumerated potential violations of the securities law(s); that neither Mr. and Mrs. C nor Mr. T suffered any loss in their various accounts predicated upon his investment recommendations and/or account management; and that he did not sell or recommend the realty investment to either Mr. T or Mr. and Mrs. C.

In summary, the only pertinent evidence presented in this matter is that the allegations of the underlying claim are false. Accordingly, I recommend expungement of the T/C arbitration from Claimant’s CRD records.

4. 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

**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, LPL is assessed the following:

Member Surcharge = \$ 150.00

Accordingly, as a party, Prospera is assessed the following:

Member Surcharge = \$ 150.00

Accordingly, as a party, VSR is assessed the following:

Member Surcharge = \$ 150.00

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: November 1, 2018 1 session

Three (3) hearing sessions on expungement request @ \$50.00/session = \$150.00
Hearing Date: February 4, 2019 1 session
March 11, 2019 2 sessions

Total Hearing Session Fees = \$200.00

The Arbitrator has assessed \$200.00 of the hearing session fees to Claimant.

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

ARBITRATOR

Daniel B. MacLeod

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



Daniel B. MacLeod
Sole Public Arbitrator



Signature Date

July 2, 2019

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