

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

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In the Matter of the Arbitration Between:

Claimants

████████████████████  
████████████████████

Case Number: ██████████

vs.

Respondent

Eplanning Securities, Inc.

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Persons vs. Member

**REPRESENTATION OF PARTIES**

For Claimants ██████████ (“██████████” and ██████████ (“██████████”  
Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

Respondent Eplanning Securities, Inc. (“Respondent”) did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: December 25, 2018.

Amended Statement of Claim filed on or about: April 4, 2019

██████████ signed the Submission Agreement: December 21, 2018.

██████████ signed the Submission Agreement: April 4, 2019.

**CASE SUMMARY**

In the Statement of Claim, ██████████ asserted a claim seeking expungement of an arbitration case, occurrence number ██████████ from his Central Registration Depository (“CRD”) records.

In the Amended Statement of Claim, ██████████ removed his request for expungement of occurrence number ██████████ and asserted a claim seeking expungement of another customer complaint, occurrence number ██████████ from his CRD records. ██████████ joined the matter as a claimant and asserted a claim seeking expungement of the same customer complaint, reflected as occurrence number ██████████ from his respective CRD records. Hereinafter, occurrence numbers ██████████ and ██████████ are collectively referred to as the “Underlying Complaint.” Claimants also included additional factual allegations in the Amended Statement of Claim.

**RELIEF REQUESTED**

In the Statement of Claim, ██████████ requested:

1. Expungement of occurrence number [REDACTED] 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 occurrence number [REDACTED] 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 Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

In the Amended Statement of Claim, Claimants requested:

1. Expungement of the Underlying Complaint from their 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 Complaint from their 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 Respondent; and
4. Any and all other relief that the Arbitrator deems just and equitable.

At the hearing, Claimants withdrew their request for \$1.00 in damages.

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

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

On July 2, 2019, Claimants submitted notice that the customer in the Underlying Complaint ("Customer") died in 2011. On July 15, 2019, Claimants submitted an affidavit advising that Claimants were unable to serve the Statement of Claim as the Customer is deceased. The Arbitrator found that Claimants' service efforts were sufficient.

The Arbitrator conducted a recorded telephonic hearing on August 8, 2019 to hear oral argument and evidence on Claimants' requests for expungement.

Respondent did not file a Statement of Answer or Submission Agreement, and did not appear at the expungement hearing. Upon review of the file, the Arbitrator determined that Respondent has been out of business and defunct for several years. The Arbitrator noted that Respondent's participation was not necessary for the expungement request to proceed and determined that the matter would proceed without Respondent present.

The Arbitrator reviewed Claimants' BrokerCheck® Reports.

The Arbitrator noted that the Underlying Complaint was not settled and therefore, there were no settlement documents to review.

The Arbitrator noted that Claimants did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimants' testimony; Claimants' BrokerCheck® Reports; the Statement

of Claim; the Amended Statement of Claim; Exhibit 2 – Claimants’ letter to Great American Financial Resources dated March 22, 2011 in response to the Customer’s complaint; Exhibit 3 – Great American Delivery Documents dated June 18, 2008; Exhibits 4–6 – copies of the Great American Individual Deferred Annuity Contracts; and Exhibit 7 – Great American Financial Resources letter to Customer Dated March 25, 2011 in response to the Customer’s complaint.

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 the Underlying Complaint, occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by CRD, for Claimant [REDACTED] (CRD# [REDACTED] and Claimant [REDACTED] (CRD# [REDACTED] respectively, with the understanding that, pursuant to Notice to Members 04-16, Claimants [REDACTED] and [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 factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

These findings are made as to both Claimants, as they were co-brokers for the Customer. The Customer was an 87 year-old experienced investor (with experience in annuities), who sought protected growth and income from fixed annuities. The three annuities at issue represented 9% of the Customer’s net worth and performed exactly as predicted (i.e. producing income with no loss). The annuities at issue were not her sole source of income. There was full disclosure in her conversations with Claimants concerning the investments and in the written materials provided to her before investing (see Exhibits 4–6). The reason for the complaint claiming “rescission” of the investment contracts is unclear. The claim was refuted, point by point, by Claimants’ then attorney, and then denied by the insurance company that issued the annuities. There was no known follow-up by anyone concerning the claim, including the Customer’s heirs.

Claimants' testimony and Exhibit 2 showed that the annuities were ultimately liquidated according to Claimant's terms, with no surrender charge. The Customer received the full value of the annuities, which was \$9,000.00 more than what the Customer demanded, due to earnings. The annuities were not misrepresented or unsuitable for the Customer and the alleged wrongdoing was unspecified, unclear, unproved and clearly contradicted by the facts.

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: May 21, 2019	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$50.00
Hearing Date: August 8, 2019	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 jointly and severally to Claimants.

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

**ARBITRATOR**

Kirtley M. Thiesmeyer

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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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Kirtley M. Thiesmeyer  
Sole Public Arbitrator

25 AUGUST 2019

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Signature Date

August 26, 2019

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