

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

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In the Matter of the Arbitration Between:

Claimant

██████████

Case Number: ██████████

vs.

Respondents

Centaurus Financial, Inc.  
Invest Financial Corporation  
LPL Financial LLC

Hearing Site: Phoenix, Arizona

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Nature of the Dispute: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Christopher Cummins, Esq. and Docthor Kennedy, J.D., MBA, AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Centaurus Financial, Inc. (“Centaurus”): Michael Leahy, Esq., Centaurus Financial, Inc., Anaheim, California.

For Respondent Invest Financial Corporation (“IFC”): Scott R. Forbush, Jackson National Life Insurance Company, Lansing, Michigan.

For Respondent LPL Financial LLC (“LPL”): Jon D. Kaplon, Esq., LPL Financial LLC, Boston, Massachusetts.

Hereinafter, Centaurus and IFC are collectively referred to as “Respondents.”

**CASE INFORMATION**

Statement of Claim filed on or about: July 11, 2018.

Amended Statement of Claim filed on or about: September 19, 2018.

Claimant signed the Submission Agreement: July 11, 2018.

Statement of Answer filed by Centaurus on or about: August 31, 2018.

Centaurus signed the Submission Agreement: September 5, 2018.

Statement of Answer filed by IFC on or about: October 11, 2018.

IFC signed the Submission Agreement: October 11, 2018.

LPL did not file a Statement of Answer.

### **CASE SUMMARY**

Claimant asserted a claim against LPL and Centaurus seeking expungement of three customer complaints (“Underlying Complaints”), occurrence numbers [REDACTED] and [REDACTED] from his Central Registration Depository (“CRD”) records.

In the Amended Statement of Claim, Claimant replaced LPL with IFC as a respondent in this matter.

In its Statement of Answer, Centaurus advised that it will defer to the Arbitrator with respect to Claimant’s request for expungement.

In its Statement of Answer, IFC advised that it takes no position on the requested relief, except that Claimant is not entitled to any monetary relief.

### **RELIEF REQUESTED**

In the Statements of Claim, Claimant requested:

1. Expungement of the Underlying Complaints 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 Complaints 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, Centaurus requested:

1. A statement from the Arbitrator on the issue of whether to order that the Underlying Complaints be expunged from Claimant’s CRD records in the form required by FINRA Rule 2080;
2. Denial of all of requests for relief; and
3. All forum costs are assessed against Claimant.

In the Statement of Answer, IFC requested that Claimant should bear all fees and costs associated with these proceedings.

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

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

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

On December 20, 2018, Claimant submitted an Affidavit of Service, signed by Claimant’s counsel, advising that a copy of the Statement of Claim had been served on: the customer in occurrence number [REDACTED] (“Mr. M”); the customer in occurrence

number [REDACTED] (“Ms. W”); and the customers in occurrence number [REDACTED] (“Dr. and Mrs. P”).

On January 11, 2019, Dr. and Mrs. P filed a written submission in opposition to Claimant’s request for expungement of occurrence number [REDACTED]

The Arbitrator conducted a recorded telephonic hearing on January 15, 2019 so the parties could present oral argument and evidence on Claimant’s request for expungement.

Centaurus participated in the expungement hearing and, as stated in its Statement of Answer, deferred to the Arbitrator on the issues of expungement. IFC did not participate in the expungement hearing and, as stated in its Statement of Answer, took no position on the issue of expungement.

Mrs. P participated in the expungement hearing and contested the request for expungement of occurrence number [REDACTED]

The Arbitrator reviewed the BrokerCheck® Report for Claimant.

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

The Arbitrator noted that Claimant 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: Claimant’s testimony; and the following exhibits: Exhibit 1 – Claimant’s BrokerCheck® Report and CRD Individual Snapshot Report, Exhibit 2 – MetLife Variable Annuity Application for Mr. M dated October 19, 2010, Exhibit 3 – Allianz Life Insurance Company of North America letter to Ms. W dated March 12, 2015, Exhibit 4 – Centaurus Client Agreement/ New Account Applications for Dr. and Mrs. P; and Exhibit 6 – Centaurus Letter to Mrs. P dated September 21, 2016.

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 the Underlying Complaints, occurrence numbers [REDACTED], [REDACTED], and [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 of Arbitration Procedure ("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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

**Occurrence Number [REDACTED] (in which Mr. M was the customer)**

Claimant testified that he recommended a variable annuity with the death benefit feature to Mr. M after speaking to him, "5 to 7 times."

Mr. M filled out the application for the annuity, which had information about the fees, costs and about annuities in general (Exhibit 2).

Claimant testified that he was in a serious accident a week after the application was signed by Mr. M and could not be contacted. During that time, Mr. M was contacted by MetLife Investors USA Insurance Company ("MetLife"), the insurance company that sold the annuity, who informed him that his age precluded him from obtaining the death benefit recommended by Claimant. He could however, obtain the annuity without the death benefit. When Mr. M was unable to reach Claimant, he wrote to MetLife regarding the annuity. MetLife offered to let him rescind the annuity, but he chose not to. This contact was then reported to Claimant's CRD record and BrokerCheck® Report. The contact was characterized as "misrepresentation of purchase product." Mr. M remained a client of Claimant for some time after the incident and only left Claimant when he moved to Nevada. Based on Claimant's testimony, Mr. M did not regard his MetLife correspondence as a complaint against the Claimant.

As the matter was given a status of Closed/No action (Exhibit 1, page 13) on Claimant's BrokerCheck® Report, no money was paid by Claimant or IFC.

**Occurrence Number [REDACTED] (in which Ms. W was the customer)**

Ms. W complained that her annuity was based on inaccurate information about her finances. Claimant testified that Ms. W sought investment advice from him, including annuities, and filled out a Centaurus Financial Client Form. On that form, she stated that she had an annual income between \$29,000 and \$49,000 and a net worth between \$100,000 and \$249,900 (Exhibit 3). Claimant used the information on Ms. W's investor profile and objectives in recommending various investments to her, including an annuity product by Allianz Life Insurance Company of North America ("Allianz"). Ms. W and Claimant completed written materials which included a Product Suitability Form for Allianz. In the Product Suitability Form, Ms. W indicated that her liquid assets were approximately

\$100,000 and her net worth was about \$250,000 (Exhibit 3). Allianz issued her policy and mailed her a copy including a copy of the Product Suitability Form. The letter stated that Allianz relied heavily on the information that she had provided to Claimant. She was given a 30 day "right to examine" the contract and return it for a full refund from the October 20, 2014 date that the contract was issued. She did not contact Allianz until February 6, 2015 (Exhibit 3). Allianz, after thorough review of Ms. W's concerns (that her assets were misstated) found that "your financial needs and situation were disclosed accurately" (Exhibit 3).

The complaint by Ms. W, as reflected in the BrokerCheck® Report (Exhibit 1, page 12), was denied and no money was paid by Centaurus or Claimant.

The Arbitrator found that Claimant's recommendation was based on information that Ms. W supplied to Claimant and that Ms. W reviewed the information on the Allianz forms. Accordingly, the Arbitrator found that the allegation was clearly erroneous.

**Occurrence Number [REDACTED] (In which Dr. and Mrs. P were the customers)**

Claimant testified that he spent more than 25 hours of planning and discussion with Dr. and Mrs. P before they filled out the paperwork to open an account with him. They completed papers that indicated that they were experienced investors in stocks, bonds, mutual funds and real estate. They had liquid assets of \$1.7 million (Exhibit 4). Claimant testified that they had an income of \$110,000 to \$120,000, owned a fully paid for home and no debt.

Dr. P had a serious disability, but he had a long term care policy that paid the bulk of his medical expenses. He also received social security disability. Claimant recommended variable annuities with lifetime guarantees and a return of premium benefit. As a result, even after fees that Dr. and Mrs. P paid, if the balance was maintained, they would have a guaranteed life income.

In May 2015, Mrs. P contacted Centaurus to complain about the services Dr. and Mrs. P were receiving from Claimant and later questioned the suitability of the annuity in which they had invested. Respondent investigated and found no merit to their allegations (Exhibit 6).

In addition, Mrs. P filed a complaint with FINRA which was investigated and found to have no merit. She also complained to the SEC and FINRA's Senior Helpline, all to no avail (Exhibit 6).

In 2016, Mrs. P filed a similar complaints with the Arizona Insurance Commissioner, Arizona Attorney General, the Better Business Bureau and the local police. All of these entities requested documents from Centaurus. No wrongdoing was discovered (Exhibit 6 and Claimant's testimony).

Claimant testified that he obtained a restraining order to keep Mrs. P from harassing him (Exhibit 6 and Claimant's testimony).

Mrs. P testified that the annuities made a profit but she considered them a loss because Dr. and Mrs. P had to pay taxes on those profits. She believes that they would have been better off if they had not made these investments.

No money was paid to resolve this matter by Claimant or Centaurus. No investigating entity found any wrongdoing (Exhibit 6).

The Arbitrator found that Dr. and Mrs. P's complaint was factually impossible and clearly erroneous as the annuity made a profit and Claimant discussed the terms of the annuity with Dr. and Mrs. P.

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, Centaurus is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, IFC is assessed the following:

Member Surcharge	= \$ 150.00
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Accordingly, as a party, LPL 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
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Pre-hearing conference:	November 7, 2018	1 session	
One (1) hearing session on expungement request @		\$50.00/session	= \$50.00
Hearing Date:	January 15, 2019	1 session	
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Total Hearing Session Fees			= \$100.00

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**

Walter Steven Schwartz

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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**

  
\_\_\_\_\_  
Walter Steven Schwartz  
Sole Public Arbitrator

2/27/2019  
\_\_\_\_\_  
Signature Date

March 1, 2019  
Date of Service (For FINRA Office of Dispute Resolution office use only)