

AWARD
FINRA DISPUTE RESOLUTION

CASE #: [REDACTED]
[REDACTED] (“Claimant”) vs. LPL Financial LLC (“LPL”)

REPRESENTATION OF PARTIES:

For Claimant: Leslie Walter, Esq., and Dochter Kennedy, JD, AdvisorLaw, LLC, Broomfield, Colorado.

For LPL: Jon D. Kaplon, Esq., LPL Financial, LLC, Boston, Massachusetts.

NATURE OF DISPUTE: Associated Person vs. Member

Statement of Claim filed on or about: August 5, 2016.

CASE SUMMARY: Claimant asserted a claim for recommendation of expungement of a complaint filed by a customer (the “Customer”), occurrence number [REDACTED] (“Underlying Complaint”) from his Central Registration Depository (“CRD”) record.

RELIEF REQUESTED: In the Statement of Claim, Claimant requested:

Compensatory Damages:	\$1.00
Expungement:	Recommendation of expungement of the Underlying Complaint from his CRD record.

OTHER ISSUES: The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

The Arbitrator conducted a recorded telephonic hearing on January 5, 2017 so the parties could present oral argument on Claimant’s request for expungement.

The Customer did not participate in the expungement hearing and did not respond to notice regarding the hearing. Upon review of the file and the representations made by Claimant, the Arbitrator determined that Claimant provided notice of the expungement request and notice of the January 5, 2017 expungement hearing to the Customer by certified mail. The Customer chose not to respond or attend the hearing.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; letter dated June 24, 2009 from [REDACTED] at LPL to the Customer (Exhibit 2); and telephonic testimony of Claimant’s counsel and LPL’s counsel. The Arbitrator also reviewed and relied upon Claimant’s BrokerCheck® Report.

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1) LPL is liable for and shall pay to the Claimant \$1.00.

2) The Arbitrator recommends the expungement of all references to Underlying Complaint from Respondent [REDACTED] registration records maintained by the CRD, with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent [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; and
The claim, allegation, or information is false.

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

On May 29, 2009, the Customer lodged a formal complaint against Claimant, her broker of record at LPL, which resulted in an internal review of Claimant's actions. The Customer alleged that her financial advisers at LPL "did not listen or adhere to the basic rules of investing."

In April 2008, being dissatisfied with her previous financial adviser, the Customer sought out another financial adviser within the company to advise her on her Strategic Asset Management Advisory Account, this new broker was Claimant.

At their first meeting, Claimant recommended that the Customer invest 70% of investible assets in income-producing securities/products with the remaining 30% to be invested in growth securities.

On July 11, 2008, the Customer, having been fully informed of the risks associated with bond funds, instructed Claimant to move her account to 90% bond funds and 10% cash. Claimant did so in accordance with her directives.

As of her September 30, 2008 account statement, the Customer's account reflected a balance of \$280,083.63. The Customer was dissatisfied with the value of her investments at this point.

On October 13, 2008, the Customer met with Claimant to express her concerns regarding the market fluctuations in her account. At which point she stated that she wished to retain the existing investments until the account came back to \$300,000.00. Two days later, on October 15, 2008, the Customer called Claimant back and instructed him to sell the existing bond funds. Again, Claimant followed the directions he received. Between October 2008 and April 2009, the Customer continued to receive monthly statements summarizing her account, but at no time during this period did she convey any concerns regarding her investments to Claimant.

The first time Claimant was aware of the Customer's dissatisfaction is when she lodged her May 29, 2009 formal complaint against Claimant and LPL. The Customer did not pursue her claim in arbitration or court.

Claimant continues to work for LPL. LPL does not oppose the relief sought in the Statement of Claim recommending expungement of Claimant's CRD record.

LPL denied the Customer's claim stating in a disclosure to FINRA that the "firm reviewed evidence and found that the risks of market fluctuation associated [with] the bond and mutual fund investments in question were fully disclosed to the customer, and that these investments were suitable in light of her stated investment objectives and time horizon."

Claimant continues to work at LPL as a broker in good standing.

OTHER FEES: Respondent has paid to FINRA Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

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.*

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) hearing session on expungement request @ \$50.00/session = \$ 50.00

Hearing Date: January 5, 2017 1 session

Total Hearing Session Fees = \$ 50.00

The Arbitrator has assessed the \$50.00 of the hearing session fees to Claimant.

ARBITRATOR

Laurel Littman Gothelf

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

Laurel Littman Gothelf
Sole Public Arbitrator



Sole
Public
Arbitrator

Signature Date 1-11-17

January 12, 2017
Date of Service (For FINRA-DR office use only)