

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

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In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

LPL Financial LLC

Hearing Site: Dallas, Texas

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Erica Harris, Esq. and Docthor Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

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

**CASE INFORMATION**

Statement of Claim filed on or about: January 29, 2019.  
Amended Statement of Claim filed on or about: March 7, 2019.  
Claimant signed the Submission Agreement: January 29, 2019.

Statement of Answer filed on or about: March 21, 2019.  
Respondent signed the Submission Agreement: February 5, 2019.

**CASE SUMMARY**

In the Statement of Claim and Amended Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from his registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent denied any allegations of wrongdoing but did not oppose Claimant’s request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim and Amended Statement of Claim, Claimant requested expungement of Occurrence Number ██████████ from his CRD records, an award of compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's request for compensatory damages in the amount of \$1.00 be denied.

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

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

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

On or about July 2, 2019, Claimant filed a copy of the letter sent to the customer related to Occurrence Number [REDACTED] providing the customer with notice of the expungement hearing date and time, notice of the opportunity to participate in the expungement hearing, and a copy of the Amended Statement of Claim. On or about July 15, 2019, Claimant filed an Affidavit of Service for the letter which was sent to the customer.

The Arbitrator conducted a recorded, telephonic hearing on August 7, 2019 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing but did not contest the request for expungement. The customer related to Occurrence Number [REDACTED] 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 customer not opposing the request for expungement. The Arbitrator noted that Claimant contributed to the settlement amount but that expungement is still appropriate as it was the policy of Respondent, at the time, for its representatives to contribute \$5,000 to settle customer disputes and the settlement agreement was for the purpose of avoiding the cost and expense of litigation.

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: account documents related to Occurrence Number [REDACTED] the testimony of Claimant, the BrokerCheck® Report for Claimant, settlement documents, the Amended Statement of Claim, and the Statement of Answer.

### **AWARD**

After considering the pleadings and 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 Occurrence Number [REDACTED] from registration records maintained by the CRD, for Claimant [REDACTED]

[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 finding of fact:

The claim, allegation, or information is false.

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

Claimant testified, and was credible in his explanation, that he explained to the customer the risks of the investment and the penalty for early withdrawal. Claimant introduced exhibits that reflected the signature of the customer on several documents reflecting the disclosure, namely Exhibit 4 that reflects the customer received and reviewed Exhibit 6, the Special Tax Notice Regarding Plan Payments that disclosed the penalty (which the customer claimed he was not given). These facts, as well as Claimant's testimony that the customer had obtained his Series 6 and Series 63 licenses and was registered with Respondent at the time of the rollover, support a finding that the claim, allegation, or information is false. Also, Respondent stated that it did not oppose expungement but was in favor of it and testified that it was the policy of Respondent, at the time, for representatives to contribute \$5,000 to settle customer disputes.

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 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

**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, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session @ \$50.00/session = \$ 50.00  
Pre-hearing conference: May 20, 2019 1 session

One (1) hearing session @ \$50.00/session = \$ 50.00  
Hearing Date: August 7, 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**

Patricia Beaujean Lehtola

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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**

***Patricia Beaujean Lehtola***

Patricia Beaujean Lehtola  
Sole Public Arbitrator

08/16/2019

Signature Date

August 19, 2019

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