

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

William Beneke and
Shirley Beneke

Case Number: 19-02008

vs.

Respondents

LPL Financial LLC and
Jake Warrington

Hearing Site: Kansas City, Missouri

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants William Beneke and Shirley Beneke (“Claimants”): Fred Spigarelli, Esq., The Spigarelli Law Firm, Pittsburg, Kansas.*

For Respondents LPL Financial LLC (“LPL”) and Jake Warrington (Warrington”), collectively, referred to as “Respondents”: Jon D. Kaplon, Esq., LPL Financial, Boston, Massachusetts.

*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: July 19, 2019.
Claimants signed the Submission Agreement: July 19, 2019.

Statement of Answer filed on or about: September 25, 2019.
Respondents signed the Submission Agreement: September 25, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: negligence and respondeat superior. The causes of action related to Claimants’ allegation that, without consent, Respondents purchased shares in Boardwalk Partners, resulting in financial losses.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested \$33,240.89 in damages, interest, costs and attorneys' fees.

In the Statement of Answer, Respondents requested the Panel dismiss any and all claims against Respondents, deny any and all demands for damages and requests for damages, costs, and/or fees against Respondents, allocate all arbitration costs and expenses against Claimants, expungement of all references from Warrington's registration records maintained by the Central Registration Depository ("CRD"), and any such other relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On October 12, 2021, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 22, 2021, Warrington filed a Motion for Expungement, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on November 29, 2021, so the parties could present oral argument and evidence on Warrington's request for expungement.

Neither Claimants nor their counsel participated in the expungement hearing.

The Arbitrator reviewed Warrington's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Warrington's testimony, Warrington's supervisor's testimony, and all exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, 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 above-captioned arbitration (Occurrence Number 2041984) from registration records maintained by the CRD for Respondent Party Jake William Warrington (CRD Number 2843126) with the understanding that, pursuant to Notice to Members 04-16, Respondent Party Jake William Warrington 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 12805 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:

Claimants allege that Mr. Beneke did not visit Warrington’s office on December 27, 2017 to order three securities trades that were made in Claimants’ account, and that the trades were made without his authorization. However, the evidence clearly refutes these allegations. Building security camera pictures introduced as an exhibit showed Mr. Beneke entering the office shortly prior to the time of the trades and his wife entering shortly thereafter. The confirmation of the trades show they were made during the time the security camera pictures show Mr. Beneke to have been in the office. Warrington testified that Mr. Beneke directed the trades and watched them being made on a computer screen in his office. Warrington’s supervisor confirmed the authentication of the pictures and the identification of Claimants in the pictures. Claimants dismissed their FINRA arbitration claims with prejudice when this evidence was provided to them. Accordingly, the claim is clearly erroneous and false.

- 2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys’ fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 600.00

**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 = \$ 750.00
Member Process Fee = \$ 1,750.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

April 1, 2020, cancellation requested by the parties Waived

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 6-7, 2020, postponement requested by the parties Waived

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

October 20-21, 2021, settled by the parties =\$ 600.00

Total Last-Minute Cancellation Fees =\$ 600.00

The Arbitrator has assessed the total last-minute cancellation fees jointly and severally to Claimants.

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, which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions @ \$450.00/session =\$ 1,800.00

Pre-Hearing Conferences:	November 6, 2019	1 session
	March 11, 2020	1 session
	July 14, 2020	1 session
	January 12, 2021	1 session

One (1) hearing session on expungement request @ \$450.00/session =\$ 450.00

Hearing:	November 29, 2021	1 session
----------	-------------------	-----------

Total Hearing Session Fees =\$ 2,250.00

The Arbitrator has assessed \$900.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$900.00 of the hearing session fees jointly and severally to Respondents.

The Arbitrator has assessed \$450.00 of the hearing session fees to Warrington.

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

ARBITRATOR

Joseph Neal Richardson

-

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

Joseph Neal Richardson

Joseph Neal Richardson
Sole Public Arbitrator

12/07/2021

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

December 07, 2021

Date of Service (For FINRA Dispute Resolution Services use only)