

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Dr. Martin Kaplan

Case Number: 19-03332

vs.

Respondents
Next Financial Group, Inc.
Stephen Dellelo

Hearing Site: Boston, Massachusetts

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: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Dr. Martin Kaplan: Kyle M. Kulzer, Esq., Alan L. Frank Law Associates, P.C., Jenkintown, Pennsylvania. *

For Respondents Next Financial Group, Inc. and Stephen Dellelo: Steven N. Fuller, Esq., Markun Zusman Freniere Compton, LLP, Wellesley, Massachusetts.

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

CASE INFORMATION

Statement of Claim filed on or about: November 7, 2019.

Dr. Martin Kaplan signed the Submission Agreement: November 7, 2019.

Joint Statement of Answer filed by Respondents on or about: February 19, 2020.

Next Financial Group, Inc. signed the Submission Agreement: January 13, 2020.

Stephen Dellelo signed the Submission Agreement: January 13, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; violation of Section 101 of the Massachusetts Uniform Securities Act; violation of FINRA suitability rules; violation of FINRA's 'Know Your Customer' rule; breach of contract; breach of fiduciary duty; professional negligence; failure to supervise and control person liability; and respondeat superior. The causes of action relate to Ohio National Whole Life Policy.

Unless specifically admitted in the Joint 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, Claimant requested damages and recovery against Respondents as follows: (i) an award of damages sustained by Claimant including, but not limited to, an amount of approximately \$215,000.00, representing the loss of Claimant's investment; (ii) interest at the legal rate on all sums recovered; (iii) the cost of this proceeding, including reasonable attorneys' fees; (iv) an award of punitive damages for Respondents' unlawful, willful, wanton and outrageous conduct; and (v) an award of such other relief as the Panel deems just and proper.

In the Statement of Answer, Respondents requested that the Statement of Claim be denied in its entirety and expungement of all references to the above-captioned arbitration from the registration records of Respondent Stephen Dellelo maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On April 30, 2021, Claimant filed a notice of voluntary dismissal of the Statement of Claim, with prejudice, against Respondent Stephen Dellelo. On May 19, 2021, Claimant advised FINRA Dispute Resolution Services that all claims were fully settled and or dismissed as to all parties. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On May 14, 2021, Respondent Stephen Dellelo filed a Motion for Expungement to which no response was filed.

The Panel conducted a recorded hearing by videoconference on May 20, 2021, so the parties could present oral argument and evidence on Stephen Dellelo's request for expungement.

Claimant and counsel did not participate in the expungement hearing and did not oppose the request for expungement.

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

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Stephen Dellelo did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Respondent Stephen Dellelo's testimony, the Life Insurance Policy Illustration prepared for Claimant at the time the whole life product in question was purchased. The Panel also took special note that Claimant voluntarily dismissed Respondent Stephen Dellelo from the claim due to "mistake of fact," that Respondent Dellelo was not a party to and did not contribute to the settlement amount, and that the settlement contained no admissions and appeared to be designed to avoid the costs of further litigation.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2054542) from registration records maintained by the CRD for Respondent Stephen Dellelo (CRD Number 2170012) with the understanding that, pursuant to Notice to Members 04-16, Respondent Stephen Dellelo 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

Respondent Stephen Dellelo ("Dellelo") demonstrated by a preponderance of the evidence that he was one of three Ohio National Life Insurance agents who worked on a tax advantaged plan to limit Claimant's risk to the securities markets while maximizing guaranteed fixed retirement income by using the proceeds from the sale of Claimant's office building and dental practice to acquire a whole life insurance policy. Dellelo's testimony further detailed that this part of a "holistic" overall investment strategy, which appeared to satisfy Claimant's requirements, was approved by Claimant and his attorney/accountant, and did not require that all of his assets be invested in a whole life policy. Dellelo recounted that there were also significant funds retained in a separate wealth management account which Claimant transferred out in September of 2018, when Claimant terminated the relationship. The evidence demonstrated that the strategy

ultimately agreed to by Claimant was sound, safe, and suitable to his needs. The evidence demonstrated that Claimant's accountant/attorney was an active participant in the transaction. Respondent Dellelo established by preponderant evidence that Claimant unilaterally decided to surrender the subject insurance policy without consulting Ohio National or his sales representatives to determine the least expensive way to exit the policy. Had he consulted Respondent Dellelo, Claimant could have avoided all or most of the surrender charge. Moreover, as reflected in the settlement agreement provided, Claimant voluntarily dismissed all claims against Respondent Dellelo "due to mistake of fact."

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee = \$ 1,425.00

**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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Next Financial Group, Inc. is assessed the following:

Member Surcharge = \$ 1,700.00
Member Process Fee = \$ 3,250.00

Postponement Fees

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

January 20-25, 2021, postponement requested by the parties waived

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 3,375.00
Pre-Hearing Conferences: March 6, 2020 1 session
January 25, 2021 1 session
May 5, 2021 1 session
One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: May 20, 2021 1 session

Total Hearing Session Fees = \$ 4,500.00

The Panel has assessed \$1,125.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$2,250.00 of the hearing session fees to Respondent Stephen Dellelo, which includes the fees for the expungement hearing.

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

ARBITRATION PANEL

John Francis Markuns	-	Public Arbitrator, Presiding Chairperson
Paula M. Bagger	-	Public Arbitrator
Gail Sillman	-	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.

Concurring Arbitrators' Signatures

John Francis Markuns

John Francis Markuns
Public Arbitrator, Presiding Chairperson

06/05/2021

Signature Date

Paula M. Bagger

Paula M. Bagger
Public Arbitrator

06/07/2021

Signature Date

Gail Sillman

Gail Sillman
Public Arbitrator

06/07/2021

Signature Date

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June 08, 2021

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