

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Susan J. Godown, Individually and as a
Joint Tenant by the Entireties

Case Number: 19-03803

vs.

Respondent

LPL Financial LLC

Hearing Site: Tampa, Florida

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

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Susan J. Godown, Individually and as a Joint Tenant by the Entireties: Bradford M. Gucciardo, Esq., Gucciardo Law Group, P.A., Lakewood Ranch, Florida.*

For Respondent LPL Financial LLC: Thomas F. Barnett, Esq., LPL Financial LLC, Boston, 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 after withdrawal of Claimant's claims. 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: December 24, 2019.

Claimant signed the Submission Agreement: December 23, 2019.

Statement of Answer filed on or about: March 4, 2020.

Respondent signed the Submission Agreement: March 4, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: common law fraud, breach of fiduciary duty, negligence (gross negligence), breach of contract, failure to supervise,

violation of FINRA Rules, violation of federal and state laws, unsuitability, and misrepresentations and omissions. The causes of action related to Claimant's allegation that Respondent's employee, Unnamed Party Samuel J. Flaherty ("Flaherty"), recommended that Claimant and her husband invest in unsuitable securities, including a variable annuity. Claimant further alleged that Flaherty engaged in other improper conduct from the time Claimant's divorce proceedings was pending through its conclusion.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages of at least \$100,000.00; punitive damages of at least \$200,000.00; pre-award and post-award interest, at the legal rate, for Claimant's loss of use of her capital; all costs and fees incurred in this action, including forum fees, expert witness fees, and additional costs/fees incurred, including attorneys' fees; and such further relief as the Panel deems just and appropriate.

In the Statement of Answer, Respondent requested that the Panel issue an award dismissing the Statement of Claim; providing that Claimant recover nothing; recommending expungement of all references to this matter from Flaherty's registration records maintained by the Central Registration Depository ("CRD"); and granting it such other and further relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 12, 2020, Respondent filed a Motion for Partial Dismissal. On October 2, 2020, the parties filed a Joint Stipulation of the Parties on Motion for Partial Dismissal, wherein Claimant dismissed any and all claims against Respondent related to the suitability of the variable annuity purchased in October 2007 and to purported conduct by Respondent or its agents that occurred prior to December 23, 2013 and Respondent withdrew its Motion for Partial Dismissal.

On December 18, 2020, Claimant withdrew all claims asserted against Respondent with prejudice. Accordingly, the Panel did not adjudicate any of Claimant's claims.

On December 31, 2020, Respondent filed a Petition for Expungement on behalf of Flaherty, to which no response was filed.

The Panel conducted a recorded, telephonic on February 26, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement of Flaherty's registration records.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Panel reviewed Flaherty'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 noted that the above-captioned arbitration was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, Flaherty's testimony, and the exhibits attached to Respondent's Petition for Expungement.

The Award in this matter may be executed in counterpart copies.

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 2061763) from registration records maintained by the CRD for Unnamed Party Samuel J. Flaherty (CRD Number 4387447) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Samuel J. Flaherty 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 false.

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

Through his testimony and exhibits presented, Flaherty proved the investments were suitable and that Claimant misunderstood the divorce decree settlement documents, which addressed ownership of investments. Flaherty also proved that he did not misrepresent or omit facts to Claimant about the investments at any time.

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 = \$ 1,425.00

**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimant's filing fee of \$ 1,425.00. Upon conclusion of the matter, the Panel determined to assess the non-refundable portion of the filing fee in the amount of \$300.00 to Claimant.

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(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 1,900.00
Member Process Fee = \$ 3,750.00

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

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-Hearing Conferences: May 14, 2020 1 session	
February 16, 2021 1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: February 26, 2021 1 session	
<hr/> Total Hearing Session Fees	<hr/> = \$ 3,375.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$2,812.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Karimu F. Hill-Harvey	-	Public Arbitrator, Presiding Chairperson
Natalie Paskiewicz	-	Public Arbitrator
Jason Paul Ramos	-	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

Karimu F. Hill-Harvey

Karimu F. Hill-Harvey
Public Arbitrator, Presiding Chairperson

03/09/2021

Signature Date

Natalie Paskiewicz

Natalie Paskiewicz
Public Arbitrator

03/10/2021

Signature Date

Jason Paul Ramos

Jason Paul Ramos
Public Arbitrator

03/10/2021

Signature Date

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March 10, 2021

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