

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Gary Jesse Deardorff

Case Number: 20-00067

vs.

Respondents
LPL Financial LLC
Next Financial Group, Inc.

Hearing Site: Phoenix, Arizona

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: Associated Person vs. Members.

REPRESENTATION OF PARTIES

For Claimant Gary Jesse Deardorff (“Claimant”): Tosh D. Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

For Respondent LPL Financial LLC (“LPL”): Sara B. Davis, Esq., LPL Financial LLC, Boston, Massachusetts.

For Respondent Next Financial Group, Inc. (“NEXT”): John T. Unger, Esq., Next Financial Group, Inc., Houston, Texas.

Hereinafter, LPL and NEXT are collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: January 7, 2020.
Claimant signed the Submission Agreement: December 28, 2019.

Statement of Answer filed by LPL on or about: February 27, 2020.
LPL signed the Submission Agreement: January 23, 2020.

Statement of answer filed by NEXT on or about: February 24, 2020.
NEXT signed the Submission Agreement: February 24, 2020.

CASE SUMMARY

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

In their respective Statements of Answer, Respondents did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1187202 and 1532146 from Claimant’s CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claims, allegations, or information are factually impossible or clearly erroneous, and FINRA Rule 2080(b)(1)(C), as the claims, allegations, or information are false; and
2. Compensatory damages in the amount of \$1.00 each from Respondents.

In the Statement of Answer, LPL requested:

1. Any money damages, even in the nominal amount of \$1.00, be denied; and
2. All costs in connection with the matter be assessed against Claimant.

In the Statement of Answer, NEXT requested:

1. Claimant’s request for damages be denied in its entirety; and
2. All forum fees, costs, and other charges relating to the case be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 16, 2021, Claimant advised that the customers in Occurrence Number 1187202 (“Mr. F”) and Occurrence Number 1532146 (“Mr. H”) were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. F and Mr. H are collectively referred to as “Customers”.

The Arbitrator conducted a recorded, in-person hearing on November 16, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondents did not participate in the expungement hearing.

The Customers also did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant’s BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1532146, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator also noted that Claimant was required to contribute his insurance deductible by his errors and omissions insurance carrier for the settlement. Expungement is still warranted as Claimant's contribution to the settlement amount was made out of his errors and omissions insurance and the contribution to the settlement was to avoid the cost of litigation.

The Arbitrator noted that the dispute related to Occurrence Number 1187202 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; and Claimant's testimony.

AWARD

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

1. Claimant's claim for \$1.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1532416 and 1187202 from registration records maintained by the CRD for Claimant Gary Jesse Deardorff (CRD Number 1216674) with the understanding that, pursuant to Notice to Members 04-16, Claimant Gary Jesse Deardorff 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:

Occurrence Number 1532146

This complaint involved several accounts controlled by Mr. H and his wife, "Mrs. H." Claimant served as their broker during a period of remarkable growth and profitability in financial markets (around 2000). Mr. and Mrs. H instructed Claimant that their tolerance for financial risk was high and that they preferred investments for growth rather than more conservative growth/income or income-only investments. Their application forms with LPL and NEXT reflect the same. Claimant advised against this investment strategy over a period of years, recommending instead, a more

conservative and safer strategy. Mr. and Mrs. H rebuffed Claimant's recommendations. As the boom times (2002) moved toward the Great Recession (2008), Mr. and Mrs. H's riskier stocks began to lose money, as Claimant had warned might occur. The evidence shows that Mr. and Mrs. H were experienced investors but rejected Claimant's recommendations nonetheless. Thereafter, Mr. and Mrs. H formally complained that they had been given poor advice and that Claimant, not them, had put them into the riskier stocks. Based on Claimant's testimony, this was not true. Therefore, the Arbitrator recommends expungement of Occurrence Number 1532146 pursuant to FINRA Rule 2080(b)(1)(C), that is, Mr. and Mrs. H's allegations are false.

Occurrence Number 1187202

This complaint involves a nondiscretionary account opened in 2000 by Mr. F, who claimed he was a seasoned investor who took an active part in his portfolio. According to Claimant, Mr. F would visit Claimant's office, often, perhaps once a week, to discuss the markets and his participation in them. Mr. F stated his objective was growth and he invested in large capitalization stocks such as Enron, Tyco, and St. Jude, as well as mutual funds. This was the status of the account when Claimant became involved. The future of Enron became questionable and later the same occurred for Tyco. Claimant recommended selling at least portions of these stocks, but Mr. F declined; he remained bullish despite the increasingly dark skies in the financial markets, and despite Claimant's recommendations to pare his holdings and then to sell the profitable ones as the time became more ominous. Finally, Enron and Tyco suffered disastrously and Mr. F lost money. In his complaint, Mr. F alleges Claimant tried to persuade him not to sell his holdings in Enron and Tyco during these turbulent times. Based on Claimant's testimony, this was not true. Therefore, the Arbitrator recommends expungement of Occurrence Number 1187202 pursuant to FINRA Rule 2080(b)(1)(C), that is, Mr. F's allegations are false.

3. 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 Dispute Resolution Services 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.*

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 parties, LPL and NEXT are each assessed the following:

Member Surcharge = \$ 150.00

Postponement Fees

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

August 4, 2020 postponement requested by Claimant	= \$	Waived
October 26, 2021 postponement requested by Claimant	= \$	Waived

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$	100.00
Pre-Hearing Conferences: April 22, 2020	1 session	
January 6, 2021	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: November 16, 2021	1 session	
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Total Hearing Session Fees	= \$	150.00

The Arbitrator has assessed the total hearing session fees to Claimant.

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

ARBITRATOR

Michael Kelley

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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

Michael Kelley

Michael Kelley
Sole Public Arbitrator

11/27/2021

Signature Date

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November 29, 2021

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