

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Angela Jill Cameron

Case Number: 20-00132

vs.

Respondents  
LPL Financial LLC  
Hassan Nemer Fawaz

Hearing Site: Nashville, Tennessee

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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

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Angela Jill Cameron (“Claimant”): Heather G. Anderson, Esq., Bernstein, Stair & McAdams LLP, Knoxville, Tennessee.\*

For Respondent LPL Financial LLC (“LPL Financial”): Eleonora Yonge, Esq., LPL Financial LLC, San Diego, California.

For Respondent Hassan Nemer Fawaz (“Fawaz”): N. Nancy Ghabai, Esq., Ghabai Law Group, LLC, Los Angeles, California

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

\*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: January 16, 2020.

Claimant signed the Submission Agreement: January 14, 2020.

Statement of Answer filed by Respondents on or about: March 27, 2020.

LPL Financial signed the Submission Agreement: January 30, 2020.  
Fawaz signed the Submission Agreement: March 26, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; negligent misrepresentation; and negligence. The causes of action relate to an annuity held by Nationwide Insurance Company.

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, Claimant requested:

1. Compensatory damages in the amount of \$56,927.00;
2. The amount lost on the annuity as compared with replacement investment;
3. The amount by which Claimant's Social Security benefits decreased based on the consequences of investing in the annuity;
4. Attorney's fees and costs, including expert witness fees and arbitration filing fees;
5. Pre-judgment and post-judgment interest; and
6. Such other relief as the Arbitrator deems just and appropriate.

In the Statement of Answer, Respondents requested:

1. An award dismissing the Statement of Claim in its entirety;
2. Expungement of Occurrence Number 2043490 from Fawaz's Central Registration Depository ("CRD") records;
3. Such other, further and separate relief as the Arbitrator may deem appropriate, including, but not limited to, reasonable fees and costs associated with the proceeding.

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

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

On December 30, 2020, Claimant filed a notice of voluntary dismissal of claims in this matter with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On February 26, 2021, Fawaz filed a Motion for Expungement, to which no response was filed.

The Arbitrator conducted a recorded hearing by videoconference on June 1, 2021, so the parties could present oral argument and evidence on Fawaz's request for expungement.

Claimant did not participate in the expungement hearing.

The Arbitrator reviewed Fawaz'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.

The Arbitrator 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 Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Fawaz did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; exhibits; Fawaz' testimony; the settlement agreement; Fawaz's BrokerCheck® Report; and Fawaz's Motion for Expungement.

### **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 2043490) from registration records maintained by the CRD for Respondent Hassan Nemer Fawaz (CRD Number 3006258) with the understanding that, pursuant to Notice to Members 04-16, Respondent Hassan Nemer Fawaz 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.

The claim, allegation, or information is false.

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

In the underlying arbitration matter, Claimant alleged Fawaz and his employer should be liable for federal taxes she owed after liquidating an annuity. The Nationwide annuity at issue was purchased through another broker and was inherited by Claimant. Claimant claimed to have 20+ years of investment experience, strong personal net worth, and steady annual income as a nurse.

The underlying matter settled for a nominal amount and the settlement was paid entirely by LPL Financial. Fawaz was not asked to contribute to the settlement and did not contribute. Fawaz opposed settling the matter as he knew he acted appropriately in all aspects.

Fawaz' recommendation to liquidate the annuity was reasonable, even prudent, as the annuity's fee structure was high (2.6% annually) and it historically under-performed as

measured against relevant indices. Claimant's other assets also accrued high fees. Fawaz recommended a balanced, diversified portfolio to lower her fees, stabilize the investments and increase earnings. His plan would use, among other investments, highly-rated (by Morningstar) and low-cost ETF's. His recommendation matched her 10-year, moderate-risk profile and would accrue annual fees of about 0.7%.

Claimant had withdrawn distributions from the annuity each of five prior years, paying approximately 25% federal tax each time. If Claimant continued to withdraw annual amounts, she would be subject to similar tax bills. Liquidating the entire annuity to invest in a diversified portfolio merely accelerated federal taxes due.

Fawaz provided Claimant no tax advice. He verbalized her need to seek advice from a tax expert. Additionally, at least two LPL Financial documents given to Claimant reiterated LPL Financial's policy that LPL Financial and its advisors did not offer tax advice and she should seek separate tax expertise.

Claimant raised concerns to Fawaz regarding the taxes due on liquidation of the annuity, which was the information she had just learned from her tax advisor. The basis on the annuity was only \$115,000, thus tax would be due on \$210,000 -- a higher number than previously given to Fawaz. To allay her concerns, Fawaz offered two options: (1) rescind the annuity sale and continue with the negative aspects of doing so; or (2) ratify the sale, save on annual fees, and own a diversified portfolio. After consulting with her accountant and her husband, Claimant agreed the sale was the better option over her desired 10-year period, even if having to pay taxes immediately.

An issue arose whether the annuity was "qualified" or "non-qualified", and the tax ramifications thereof. Only after receiving an IRS form 1099 from Nationwide Insurance Company, it was clear that the annuity was "qualified", thus requiring higher tax payments. Nevertheless, Fawaz testified that, if he had been provided timely and accurate information about the annuity from Claimant and Nationwide Insurance Company (which he was not), his plan to liquidate, pay taxes and build a diversified portfolio was still a prudent, reasonable and fitting option for Claimant.

Fawaz made a concerted, good-faith effort to reduce Claimant's fees and provided her with a well-considered investment plan. His recommendations were reasonable and fit Claimant's needs.

For the above reasons, expungement of this occurrence is appropriate.

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

Initial Claim Filing Fee	= \$	975.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, LPL Financial is assessed the following:

Member Surcharge	= \$	1,100.00
Member Process Fee	= \$	2,250.00

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

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: April 28, 2020	1 session	
One (1) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing: June 1, 2021	1 session	
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Total Hearing Session Fees	= \$	900.00

The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Respondents.

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

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

**ARBITRATOR**

Karl A. Vogeler, III

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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**

***Karl A. Vogeler, III***

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Karl A. Vogeler, III  
Sole Public Arbitrator

**06/11/2021**

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Signature Date

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June 11, 2021

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