

**Amended Award
FINRA Dispute Resolution Services**

In the Matter of the Arbitration Between:

Claimant
Kay Ann LaMon

Case Number: 20-00301

vs.

Respondents
LPL Financial, LLC
Richard Zakery Dearing

Hearing Site: Columbia, South Carolina

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 Kay Ann LaMon: Jeff Goodwyn, Jr., Esq., Goodwyn Law Firm, LLC, Columbia, South Carolina.

For Respondents LPL Financial, LLC (“LPL”) and Richard Zakery Dearing (“Dearing”): Ryan R. Baker, Esq., Bass Berry & Sims, PLC, Memphis, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: January 26, 2020.

Kay Ann LaMon signed the Submission Agreement: January 20, 2020.

Statement of Answer filed by Respondents on or about: March 17, 2020.

LPL Financial, LLC signed the Submission Agreement: March 17, 2020.

Richard Zakery Dearing signed the Submission Agreement: March 17, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: fraud; manipulation; misrepresentation/non-disclosures; omission of facts; suitability; failure to supervise; and

negligence. The causes of action relate to the purchase of a Prudential annuity in Claimant's account.

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, Claimant requested: an unspecified amount of actual/compensatory damages; an unspecified amount of punitive/exemplary damages; a declaratory judgment that Respondents violated securities industry rules; delivery of a formal apology/letter of apology; and such other and further monetary relief the Panel deemed appropriate.

In the Statement of Answer, Respondents requested: an award dismissing the Statement of Claim in its entirety; that Claimant recover nothing; expungement of all references to this claim from Respondent Dearing's Central Registration Depository ("CRD") records; and such other, further and separate relief as the Panel deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 1, 2020, Respondents filed a Motion for Sanctions in which they asserted, among other things, that Claimant failed to produce required discovery documents and abide by the Chairperson's Order dated September 11, 2020, requesting the production of such documents. Claimant filed a response on October 14, 2020, and Respondents filed a reply on October 19, 2020. On November 13, 2020, the Panel conducted a telephonic hearing so the parties could present oral argument on the Motion for Sanctions and, on November 16, 2020, issued an Order in which it ruled as follows:

1. "Respondents' Motion for Sanctions is granted.
2. Claimant will provide to Respondents the discovery or provide an objection or reason for each document not provided, on or before November 27, 2020. Claimant has an affirmative duty to communicate with Respondents regarding any discovery issues.
3. Claimant is sanctioned the sum of Five Thousand (\$5,000.00) dollars, to be paid directly to Respondents on or before November 27, 2020.
4. Claimant will be sanctioned the additional sum of One Thousand (\$1,000.00) Dollars if said discovery is not provided on November 27, 2020, and for each additional week that the discovery is not provided to Respondents.
5. The Panel will consider a Motion to Dismiss the Arbitration from Respondents if Claimant does not comply with the Panel's Orders."

On or about January 11, 2021, Respondents filed an Expedited Motion for Additional Sanctions, to which Claimant responded on January 13, 2021, and Respondents replied on January 14, 2021. During the January 2021 evidentiary hearings, the Panel heard oral argument on the Motion for Additional Sanctions. Thereafter, the Panel denied Respondents' request for additional monetary damages and motion to compel, but ordered that adverse inferences be taken by the Panel for the series of text messages, email messages and phone conversations

that Claimant failed to produce. Any other relief requests in the Motion for Additional Sanctions, including the request for dismissal of the claims against Claimant, were denied. The Panel also decided not to assess Claimant the \$1,000.00 per week fee for failure to produce documents, and restated its prior Order that Claimant pay \$5,000.00 to Respondents for her failure to produce the requested discovery documents.

On February 19, 2021, Respondents filed a Joint Motion for Expungement of all references to this proceeding from Respondent Dearing's CRD records, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on March 19, 2021, so the parties could present oral argument and evidence on Respondents' joint request for expungement.

Claimant did not participate in the expungement hearing. The Panel found that Claimant had notice of the expungement request and hearing.

The Panel reviewed Respondent Dearing'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.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's testimony; Respondents' testimony; Claimant's Statement of Claim with exhibits; Respondents' Statement of Answer; all motion briefs on Respondents' discovery motions and motions for sanctions; Claimant's Affidavit of Attorneys' fees; Respondents' Attorneys' Fees Submission and Response to Claimant's Affidavit of Attorneys' Fees; Claimant's Pre-Hearing Brief and Letter of Acceptance Waiver and Consent; and Respondents' Pre-Hearing Brief.

On April 2, 2021, the Award was amended to replace Michael A. Brady, Esq. by Ryan R. Baker, Esq. as attorney of record for Respondent in this proceeding.

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. Claimant's claims are denied in their entirety.
2. Pursuant to Rule 12212 of the Code of Arbitration Procedure (the "Code"), Claimant is liable and shall pay to Respondents the sum of \$5,000.00 for discovery sanctions.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2063538) from registration records maintained by the CRD for Respondent Richard Z. Dearing (CRD Number 6442682) with the understanding that, pursuant to Notice to Members 04-16, Respondent Dearing 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, the Panel 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 Panel has made the above Rule 2080 findings based on the following reasons:

Claimant alleged that she received poor advice in connection with the surrender of an annuity and filed a Statement of Claim with FINRA for arbitration. The arbitration was heard by this same Panel of three arbitrators who ruled against Claimant and denied all her claims. At both the arbitration hearing and the latter expungement hearing, the Panel received evidence from Respondent Dearinger that he performed due diligence for Claimant, meeting with her to review her investment goals, investigating her current annuity costs and benefits and investigating other investment options to meet her goals. Respondent Dearinger recommended suitable investments for her and recommended the sale of her current annuity. Claimant took her time in responding to his advice seeking other advice from a CPA and other investment advisors. Claimant did act on Respondent Dearinger's advice and sold her annuity and invested as recommended by Respondent Dearinger. Claimant suffered no financial loss (even given the fact that a suitable recommendation is not based on the resulting loss or gain.) Claimant's version of the facts is clearly erroneous and false. The Panel finds Claimant's allegations not credible and not supported by the evidence and therefore, factually impossible and false. For these reasons, expungement of Respondent Dearinger's CRD record is appropriate.

4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, 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 =\$ 1,575.00

*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, Respondent LPL Financial, LLC is assessed the following:

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

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00 = \$ 200.00

Respondents submitted one (1) discovery-related motion

Total Discovery-Related Motion Fee = \$ 200.00

The Panel has assessed the total discovery-related motion fee of \$200.00 to Claimant.

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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 3,375.00
Pre-Hearing Conferences: May 20, 2020 1 session
October 9, 2020 1 session
November 13, 2020 1 session

Five (5) hearing sessions @ \$1,125.00/session = \$ 5,625.00
Hearings: January 19, 2021 2 sessions
January 20, 2021 2 sessions
January 21, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: March 19, 2021 1 session

Total Hearing Session Fees = \$ 10,125.00

The Panel has assessed \$5,062.50 of the hearing session fees to Claimant.

The Panel has assessed \$3,937.50 of the hearing session fees jointly and severally to Respondents LPL and Dearinger.

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

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

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ARBITRATION PANEL

Michael J. Ahlstrom	-	Public Arbitrator, Presiding Chairperson
Stuart K. Furman	-	Public Arbitrator
Stephen Earl Clark	-	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

Michael J. Ahlstrom

Michael J. Ahlstrom
Public Arbitrator, Presiding Chairperson

April 5, 2021

Signature Date

Stuart K. Furman
Public Arbitrator

Signature Date

Stephen Earl Clark
Public Arbitrator

Signature Date

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April 5, 2021

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

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Stephen Earl Clark	-	Public Arbitrator

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Signature Date

Stuart K. Furman
Public Arbitrator

Signature Date

Stephen Earl Clark

April 2, 2021

Stephen Earl Clark
Public Arbitrator

Signature Date

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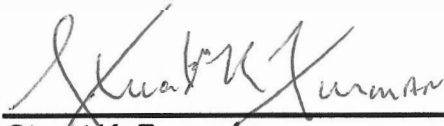
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Public Arbitrator, Presiding Chairperson

Signature Date



Stuart K. Furman
Public Arbitrator

4-2-21
Signature Date

Stephen Earl Clark
Public Arbitrator

Signature Date

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