

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Christine Kearney

Case Number: 20-00478

vs.

Respondents
LPL Financial LLC
Gregory William Kearney

Hearing Site: Syracuse, New York

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.

REPRESENTATION OF PARTIES

For Claimant Christine Kearney: Stuart E. Finer, Esq., Finer & Fanelli, Utica, New York.

For Respondents LPL Financial LLC (“LPL”) and Gregory William Kearney (“Kearney”): Tracey Salmon-Smith, Esq., Faegre Drinker Biddle & Reath LLP, Florham Park, New Jersey. LPL and Kearney are hereinafter collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: February 10, 2020.

Amended Statement of Claim filed on or about: September 28, 2021

Christine Kearney signed the Submission Agreement: January 9, 2020.

Statement of Answer filed by Respondent LPL on or about: April 3, 2020.

LPL signed the Submission Agreement: April 3, 2020.

Statement of Answer to the Amended Statement of Claim filed by Respondent Kearney on or about: October 11, 2021.

Kearney signed the Submission Agreement: October 18, 2021.

CASE SUMMARY

In the Statement of Claim, and Amended Statement of Claim, Claimant asserted the following causes of action: misrepresentation and fraud, breach of fiduciary duty, failure to supervise, and respondeat superior. The causes of action relate to a variable annuity.

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$89,788.00 plus accumulated interest and dividends; interest at the statutory rate of 9% per annum from March 29, 2019; costs and attorneys' fees; punitive damages in the amount of \$250,000.00; and such other and further relief as the Panel deems appropriate.

In the Statement of Answer, Respondent LPL requested that the Statement of Claim be dismissed in its entirety and for such other, further, and separate relief as the Panel may deem appropriate.

In the Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$89,788.00 plus accumulated interest and dividends; compensatory damages in the amount of \$30,000.00 from actions by the Financial Advisor plus interest and dividends; interest at the statutory rate of 9% per annum from March 29, 2019; costs and attorneys' fees; punitive damages in the amount of \$250,000.00; and such other and further relief as the Panel deems appropriate.

In the Statement of Answer to the Amended Statement of Claim, Respondent Kearney requested that the Panel dismiss any and all allegations of wrongdoing against him; deny any and all requests for damages, costs, and/or fees against him; attorneys' fees and costs; issue an award recommending the expungement of Occurrence Number 2066090 from the CRD record of Respondent Kearney pursuant to FINRA Rule 2080 (b)(1)(A), and/or FINRA Rule 2080 (b)(1)(C); allocate all arbitration costs and expenses against Claimant; and award such other 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 August 4, 2021, Claimant filed a Motion for Leave to Amend the Statement of Claim to add Kearney as a Respondent. On August 16, 2021, Respondent LPL filed a response to the Motion to Amend and a Cross-Motion to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). On August 19, 2021, Claimant filed a response opposing the Motion to Dismiss. On August 26, 2021, Respondent LPL filed a reply in further support of its Motion to Dismiss. On September 28, 2021, the Panel heard oral arguments on the Motion to Amend and

the Motion to Dismiss. By Order dated September 28, 2021, the Panel granted Claimant's Motion to Amend the Statement of Claim and denied Respondent LPL's Motion to Dismiss.

On October 7, 2021, Claimant filed a Motion to Postpone the hearing scheduled for October 12-15, 2021 based upon Claimant's counsel feeling ill. On the same day, Respondent filed a response opposing the Motion to Postpone. By Order dated October 8, 2021, the Panel denied Claimant's Motion to Postpone and ordered Claimant's counsel to provide FINRA Dispute Resolution Services with a Covid19 test result within 72 hours of the hearing. The Order stated that if the test is positive, the hearing in this matter will be postponed, and if the test is negative, the hearing shall take place as scheduled.

Subsequent to the Panel's Order, Claimant submitted additional correspondence in further support of the Motion to Postpone. By a second Order dated October 8, 2021, the Panel reaffirmed its decision to deny the postponement request as Claimant failed to provide any additional new reason to reverse the Panel's prior decision, such as medical records. The Panel stated that if additional documentation or medical records are provided, the Panel may reconsider the request. By email dated October 11, 2021, Claimant's counsel advised FINRA Dispute Resolution Services of a negative Covid19 test result.

At the conclusion of Claimant's case-in-chief, Respondents made a Motion to Dismiss based upon Claimant's failure to prove liability on Respondents. After due deliberation, the Panel denied the Motion.

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. Respondent Kearney's request for expungement of the above-captioned arbitration (Occurrence Number 2066090) from registration records maintained by the CRD is denied.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, and attorneys' fees, are denied.

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
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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 that employed the associated person at the time of the events 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

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: September 9, 2020	1 session	
Five (5) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	5,625.00
Pre-Hearing Conferences: June 2, 2020	1 session	
October 30, 2020	1 session	
February 10, 2021	1 session	
June 7, 2021	1 session	
September 28, 2021	1 session	
Five (5) hearing sessions @ \$1,125.00/session	= \$	5,625.00
Hearings: October 12, 2021	2 sessions	
October 13, 2021	2 sessions	
October 14, 2021	1 session	

Total Hearing Session Fees	= \$	11,700.00
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The Panel has assessed \$6,187.50 of the hearing session fees to Claimant.

The Panel has assessed \$2,812.50 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$2,700.00 hearing session fees to Respondent LPL Financial LLC.

ARBITRATION PANEL

Mark H. Stein	-	Public Arbitrator, Presiding Chairperson
Douglas A. Eldridge	-	Public Arbitrator
Ronald F Thompson	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Mark H. Stein

Mark H. Stein
Public Arbitrator, Presiding Chairperson

11/01/2021

Signature Date

Douglas A. Eldridge

Douglas A. Eldridge
Public Arbitrator

11/01/2021

Signature Date

Ronald F Thompson

Ronald F Thompson
Public Arbitrator

11/01/2021

Signature Date

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November 02, 2021

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