

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kirk Mitchell Balin

Case Number: 20-01021

vs.

Respondent
LPL Financial LLC

Hearing Site: Seattle, Washington

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. Member

REPRESENTATION OF PARTIES

For Claimant Kirk Mitchell Balin (“Claimant”): Kurt T. Kalberer II, Esq., Kalberer LLP, Palm Beach, Florida.

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

CASE INFORMATION

Statement of Claim filed on or about: March 30, 2020.

Amended Statement of Claim filed on or about: November 23, 2020.

Claimant signed the Submission Agreement: March 28, 2020.

Statement of Answer filed by Respondent on or about: May 22, 2020.

Statement of Answer to Amended Statement of Claim filed on or about: December 11, 2020.

Respondent signed the Submission Agreement: April 15, 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 the Amended Statement of Claim, Claimant asserted an additional claim seeking expungement of information from the registration records maintained by the CRD.

In the Statement of Answer, Respondent did not oppose Claimant’s request for expungement.

In the Statement of Answer to the Amended Statement of Claim, Respondent did not oppose Claimant's request for expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 2000486 and 2037289 from his CRD records; and
2. Compensatory damages in the amount of \$1.00 from Respondent.

In the Amended Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2085184.

In the Statement of Answer and the Statement of Answer to the Amended Statement of Claim, Respondent did not set forth a specific relief request.

At the close of the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 16, 2020, Claimant submitted a motion to amend the Statement of Claim. Respondent did not oppose the motion. On November 23, 2020, the Arbitrator granted the motion.

On December 31, 2020, Claimant filed an Affidavit signed by Claimant's counsel advising that the customers in Occurrence Numbers 2000486, 2037289, and 2085184 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 12, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer and the Statement of Answer to the Amended Statement of Claim, did not oppose the request for expungement.

The Customers did not participate in the expungement hearing. The customer in Occurrence Number 2037289 sent an e-mail to express that he did not object to Claimant's expungement request of this occurrence. 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 documents related to Occurrence Numbers 2000486 and 2085184, considered the amount of payments made to any party to the

settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the dispute related to Occurrence Number 2037289 was not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony, Claimant's Statement of Claim with Exhibits, and Settlement Documents for the Underlying Claims.

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. The Arbitrator recommends the expungement of all references to Occurrence Numbers 2037289 and 2085184 from registration records maintained by the CRD for Claimant Kirk Mitchell Balin (CRD Number 4590715) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kirk Mitchell Balin 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 factually impossible or clearly erroneous.

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

Occurrence Number 2037289

The customer in the underlying claim ("Mr. D") complained that Claimant failed to follow instructions and engaged in an unauthorized trade. For the reasons set forth below, the Arbitrator concludes that the claim is clearly erroneous.

In 2014, Claimant was introduced to Mr. D, a retired engineer from Seattle. After several meetings, Mr. D elected to open a strategic wealth management ("SWM") account in which Respondent was the account custodian and Claimant was the account manager.

On February 11, 2014, Mr. D signed account opening and transfer documents authorizing Respondent to request transfer of all of Mr. D's assets from another brokerage firm, American Funds. On February 26, 2014, Respondent received shares from American Target Retirement 2010 valued at \$134,331.72 from American Funds. On March 10,

2014, pursuant to instructions from Mr. D, these shares were sold for total proceeds of \$134,305.22. Thereafter, on March 10, 2014, pursuant to Mr. D's direction, four mutual funds and one exchange-traded fund ("ETF") were purchased in his account for a total amount of \$91,993.36. In addition, on March 13, 2014, \$41,500 was transferred to another Respondent account, and \$20,700 was invested in an REIT.

By letter dated April 11, 2014, Mr. D stated that he had "done well with [his] former financial advisor and prefer[red] to stay with his firm." Mr. D instructed Respondent to rescind the trades in his accounts, repurchase his old securities, and return the assets to his account at American Funds. Consistent with these instructions, the securities purchased in his account were sold, the proceeds reinvested in American Funds Target Retirement 2010 fund, and transferred back to American Funds.

In response to the notice of expungement hearing, Mr. D stated that he had no record of filing a formal complaint and did not object to expungement. Consistent with the absence of a formal complaint, there was no settlement agreement.

Based on the foregoing, the Arbitrator concludes that Claimant followed Mr. D's instructions, including receiving transfers from American Funds, making purchases, and then liquidating and transferring funds back to American Funds. The complaint by Mr. D for unauthorized trading was clearly erroneous because all of the trades were authorized and Claimant was not responsible for the loss in value in the account. Therefore, expungement of the claim is appropriate.

Occurrence Number 2085184

The customer in the underlying complaint ("Ms. B") made a complaint that the investments made on her behalf were unsuitable. For the reasons set forth below, the Arbitrator concludes that the claim is clearly erroneous.

Ms. B and her spouse (Ms. T) met with Claimant in 2015. They indicated that they had \$33,000 to invest with an investment objective of income with growth with moderate risk tolerance. This represented a relatively small portion of the couple's investment assets of what Claimant testified were much larger in balances and a significant net worth.

The evidence shows that Ms. B and Ms. T were knowledgeable investors who worked actively and extensively with Claimant to select and manage suitable investments. They had over 20 years of investment experience in mutual funds, stocks, and bonds, and an investment time horizon of greater than 10 years with no liquidity needs from the portfolio. The investments made included a diversified portfolio of mutual funds and an investment in FSIC III, a business development company. Claimant explained that the investment was illiquid and that its share price would fluctuate. Ms. B received a prospectus for FSIC III and executed a subscription agreement that specifically disclosed the investment's risks, including illiquidity and fluctuation of principal.

When Ms. B and Ms. T moved from Washington to Florida in 2017 and transferred the investments away after a little more than two years, Ms. B had gained \$3,800 in principal and in addition, had received income of \$2,800 per year.

Three years after the investments, Ms. T filed an arbitration complaint for \$10,000. Respondent settled the claim for \$8,000 to avoid the costs of arbitration. While the settlement represented a relatively high percentage of the amount claimed, the amount claimed was very low compared to the costs of arbitration. Claimant did not contribute to the settlement.

2. Claimant's request for expungement of Occurrence Number 2000486 from his registration records maintained by the CRD is 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
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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 is assessed the following:

Member Surcharge	= \$	150.00
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Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

November 3, 2020, cancellation requested by Claimant	= \$	600.00
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Total Last-Minute Cancellation Fees	= \$	600.00
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The Arbitrator has assessed the total last-minute cancellation fees to Claimant.

Postponement Fees

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

November 3, 2020, postponement requested by Claimant	= \$	50.00
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Total Postponement Fees	= \$	50.00
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The Arbitrator has assessed the total postponement fees to Claimant.

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 @ \$50.00/session	= \$	50.00
Pre-hearing Conference: August 24, 2020	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing Date: January 12, 2021	1 session	
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Total Hearing Session Fees	= \$	100.00

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

Katherine Hendricks

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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

Katherine Hendricks

Katherine Hendricks
Sole Public Arbitrator

01/30/2021

Signature Date

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.

February 02, 2021

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