

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Richard Dudley, individually,
on behalf of his IRA accounts,
and as Attorney-in-Fact for
Anna Ahrens Dudley

Case Number: 20-01114

vs.

Respondent

LPL Financial LLC

Hearing Site: Dallas, Texas

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: Customers vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Richard Dudley (“RD”), individually, on behalf of his IRA accounts, and as Attorney-in-Fact for Anna Ahrens Dudley (collectively, “Claimants”): Jason S. Haselkorn, Esq., Haselkorn & Thibaut, P.A, Palm Beach, Florida.*

For Respondent LPL Financial LLC (“Respondent”): Jack D. Ballard, Esq., Bressler, Amery & Ross, PC, Houston, Texas.

*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: April 6, 2020.

Claimants signed the Submission Agreement: April 3, 2020.

Statement of Answer filed on or about: July 2, 2020.

Respondent signed the Submission Agreement: June 24, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, negligent supervision, and violation of applicable laws and industry rules. The causes of action relate to Claimants' allegation that Respondent, through its agent, recommended unsuitable, risky, illiquid, concentrated investments. Claimants further alleged that Respondent failed to make appropriate material disclosures at the outset regarding the individual investments or the overall investment strategy.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested general and compensatory damages in the amount of \$125,000.00; lost opportunity costs; rescission of the improper investments; cost of proceedings; punitive damages; interest at the legal rate on all sums recovered; attorneys' fees and costs; and such other and further relief as the Panel deems just and appropriate.

In the Statement of Answer, Respondent requested that the Panel dismiss this proceeding with prejudice; expungement on behalf of Unnamed Party Janet Broyles ("Broyles") of all references to this matter from Central Registration Depository ("CRD") registration records; attorneys' fees and costs; assessment of all forum and other fees and costs of this arbitration against Claimants; and any other relief to which it is entitled.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 2, 2020, Respondent filed a Motion to Strike allegations in the Statement of Claim relating to financial products. On July 13, 2020, Claimants filed a response opposing the Motion to Strike. On July 20, 2020, Respondent filed a reply to Claimants' response to the Motion to Strike. In an Order dated July 27, 2020, the Panel granted the Motion to Strike, in part.

On July 29, 2021, Respondent filed a notice of settlement and requested that the case remain open to consider Respondent's request for expungement on behalf of Broyles.

On August 23, 2021, Respondent filed a Motion for Expungement on behalf of Broyles, to which no response was filed.

On October 26, 2021, Claimants filed a notice of dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Panel conducted a recorded hearing by videoconference on October 26, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Broyles' 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.

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

In recommending expungement, the Panel relied upon the following documentary or other evidence: Broyles' testimony and Respondent's exhibits 1-8.

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. The Panel recommends the expungement of all references to Occurrence Number 2071964 from registration records maintained by the CRD for Unnamed Party Janet Holland Broyles (CRD Number 1278020) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Janet Holland Broyles 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The Panel finds that Claimants' allegations of unsuitability are false in that they are not supported by the testimony or evidence presented at the hearing. There is no indication that the investments complained of were unsuitable for Claimants in conjunction with their entire portfolio, objectives, and risk tolerance level. Claimants had significant investment experience prior to opening their accounts with Respondent in stocks, bonds, mutual funds, options, and annuities, including prior experience in alternative investments, including real estate investment trusts (REITs). Broyles served as Claimants' financial advisor at Respondent's firm for less than two years. During this time, Claimants transferred to Respondent a substantial amount in assets and had a diversified portfolio. Less than 17% of the entire portfolio was invested in REITs and other alternative investments. RD frequently met and talked to Broyles prior to making investment

decisions. RD liked REITs and alternative investments and wanted to increase his position in them. RD wanted returns compatible with very aggressive, high-risk investments and oftentimes brought these type opportunities to Broyles for consideration. Broyles many times dissuaded him from these high-risk investments. When Claimants closed their accounts at Respondent's firm and transferred their portfolio to another firm, they had a profit on their alternative investments. The loss they later suffered on their investments occurred after their accounts with Respondent were closed and Broyles was no longer their adviser. They continued to hold these investments despite opportunities for redemption and exit. Broyles complied with investment guidelines regarding alternative investments versus liquid net worth. The settlement amount paid by Respondent amounts to nuisance value in comparison to Respondent's damages model.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, 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 = \$ 1,425.00

**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 is assessed the following:

Member Surcharge = \$ 1,700.00

Member Process Fee = \$ 3,250.00

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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: July 27, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: October 26, 2021 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Mary Elizabeth Skelnik	-	Public Arbitrator, Presiding Chairperson
Andrea U. Calve	-	Public Arbitrator
Charles McGarry	-	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

Mary Elizabeth Skelnik

Mary Elizabeth Skelnik
Public Arbitrator, Presiding Chairperson

11/09/2021

Signature Date

Andrea U. Calve

Andrea U. Calve
Public Arbitrator

11/09/2021

Signature Date

Charles McGarry

Charles McGarry
Public Arbitrator

11/10/2021

Signature Date

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November 10, 2021

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