

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John David Glenn II

Case Number: 20-01516

vs.

Respondent
United Planners' Financial Services of America, A
Limited Partnership

Hearing Site: San Diego, California

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

This case was administered under the Special Proceeding option of simplified cases.

REPRESENTATION OF PARTIES

For Claimant John David Glenn II (“Claimant”): Zachary T. Hayes-Macaluso, Esq., FA Expungement, LLC, Denver, Colorado.

For Respondent United Planners' Financial Services of America, A Limited Partnership (“Respondent”): Joseph Zachary, United Planners' Financial Services of America, A Limited Partnership, Scottsdale, Arizona.

CASE INFORMATION

Statement of Claim filed on or about: May 13, 2020.

Claimant signed the Submission Agreement: May 13, 2020.

Respondent did not file a Statement of Answer.

Respondent signed the Submission Agreement: June 16, 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”).

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1608789 from Claimant's CRD records in accordance with FINRA Rule 2080(b)(1)(C), pursuant to a finding that the claims, allegations and information are false; and
2. Compensatory damages in the amount of \$1.00 from Respondent.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 8, 2020, Claimant's counsel filed a signed letter advising that the customers in Occurrence Number 1608789 ("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 February 4, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The Customers did not participate in the expungement hearing. 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1608789, 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 expungement request and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; Claimant's BrokerCheck® Report; and Claimant's exhibits.

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:

The Arbitrator recommends the expungement of all references to Occurrence Number 1608789 from registration records maintained by the CRD for Claimant John David Glenn II

(CRD Number 1752345) with the understanding that, pursuant to Notice to Members 04-16, Claimant John David Glenn II 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 false.

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

Claimant was employed by LPL Financial Corporation (“LPL Financial”) from October 2000 to April 2010. The Customers became clients of Claimant in 2001. Sometime in 2006, the Customers expressed to Claimant an interest in selling and exchanging certain of their real estate holdings pursuant to Internal Revenue Code Section 1031 (“1031 exchange”) and other alternative real estate investments. The Customers had actively researched their options and some of these investments without the assistance of Claimant or LPL Financial.

In assisting the Customers with the 1031 exchange, Claimant reviewed alternative real estate investments that were vetted by LPL Financial and followed all LPL Financial protocols. Claimant reasonably relied on the resources made available to him by LPL Financial. Based on this research, Claimant presented several options to the Customers, and the Customers invested. Later, the Customers’ real estate investments suffered losses. Claimant tried to find solutions for the Customers through LPL Financial but was unsuccessful.

In 2011, the Customers filed a Statement of Claim against LPL Financial, as well as other respondents, and in 2012 the Customers were awarded significant monetary damages by an arbitration panel. Claimant was not named as a party in the arbitration. Additionally, FINRA's Department of Enforcement found that between January 1, 2008 and July 1, 2012, LPL Financial failed to implement an adequate supervisory system for the sale of alternative investments, including real estate investments.

After the award against LPL Financial, the Customers learned that Claimant was covered by errors and omissions insurance through LPL Financial and filed a Statement of Claim against Claimant. In their claim, the Customers brought causes of action against Claimant for breach of fiduciary duty, constructive fraud, negligence, misrepresentation of material facts, and violations of California Corporations Code Section 25504. Claimant was represented by counsel hired by LPL Financial’s insurance carrier. The case was settled without Claimant’s participation. It is this complaint that is the basis of the expungement hearing. The evidence showed that the Customers filed the claim solely to recover from the insurance company and not because they believed that Claimant had engaged in any misconduct or negligence. The Customers remain clients of Claimant and the Arbitrator finds that Claimant acted in their best interest.

The evidence showed that Claimant behaved professionally and at all times, acted in the best interest of the Customers. He did not engage in fraud, misrepresentation or negligence. The claim against Claimant filed by the Customers is false.

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(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	= \$	150.00
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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: October 7, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: February 4, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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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

Sally G. Williams

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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

Sally G. Williams

Sally G. Williams
Sole Public Arbitrator

03/08/2021

Signature Date

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March 09, 2021

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