

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Bryon Keith Spicer

Case Number: 20-01599

vs.

Respondent  
USA Advanced Planners Inc.

Hearing Site: Cincinnati, Ohio

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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 Bryon Keith Spicer (“Claimant”): Benjamin Winograd, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

Respondent USA Advanced Planners Inc. (“Respondent”) did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: May 20, 2020.

Claimant signed the Submission Agreement: May 19, 2020.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

**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 expungement of Occurrence Number 1872291, an award of compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”).

On November 24, 2020, Claimant advised that the customers in Occurrence Number 1872291 (“Customers”) were served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On December 1, 2020, Claimant filed an Affidavit confirming that the Customers were served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

On December 16, 2020, the Customers submitted a written statement opposing Claimant’s assertions in the Statement of Claim.

The Arbitrator conducted a recorded, telephonic hearing on January 19, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

The Customers also 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 documents, considered the amount of payments 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 contribute to the settlement amount. The Arbitrator also noted that the settlement document provided, was not fully executed.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s testimony, the pleadings, and Claimant’s Expungement Hearing Exhibits 1-11.

### **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 Number 1872291 from registration records maintained by the CRD for Claimant Bryon Keith Spicer (CRD Number 2958719) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Bryon Keith Spicer 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, the Arbitrator 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

Expungement is recommended, because the testimony and evidence show that the investment was appropriate for the Customers and understood by the Customers. Claimant testified that the Customers were accredited investors with extensive experience managing their accounts. The Customers had no liquidity requirements and wanted long-term growth. In 2006, Claimant recommended a Charitable Limited Partnership. Claimant and the Customers discussed the investment for a year. Claimant brought in an expert on advanced tax reduction strategies to explain the investment to the Customers. The Customers had it reviewed by their certified public accountant, who approved it. The Customers made the investment in 2007. The Customers terminated the relationship with Claimant in 2010 and filed their complaint in 2015. The claim was for \$1,300,000.00, was settled for \$275,000.00, and Claimant contributed \$30,000.00.

2. Any and all claims for relief not specifically addressed herein 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	= \$	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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge Fee = \$ 150.00

**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 @ \$50.00/session = \$ 50.00  
Pre-Hearing Conference: September 30, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: January 19, 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**

John F. Burns

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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**

***John F. Burns***

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John F. Burns  
Sole Public Arbitrator

**01/26/2021**

\_\_\_\_\_  
Signature Date

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January 26, 2021

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