

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Francis Lynch

Case Number: 20-01735

vs.

Respondent
Ameriprise Financial Services, LLC

Hearing Site: Milwaukee, Wisconsin

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 John Francis Lynch (“Claimant”): Michael O’Gara, Esq. and Dochter Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Ameriprise Financial Services, LLC (“Respondent”): Howard M. Klausmeier, Esq., Ameriprise Financial, Troy, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: June 3, 2020.
Claimant signed the Submission Agreement: June 2, 2020.

Statement of Answer filed on or about: July 27, 2020.
Respondent signed the Submission Agreement: July 24, 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 Statement of Answer, Respondent concurred in Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 986395, 1012411, 1113859, 1132299, and 1245204; an award of compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested an award be issued recommending that Claimant's expungement request be granted and denying any and all relief requested against it.

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 November 30, 2020, Claimant advised that the customers in Occurrence Numbers 986395, 1012411, 1113859, 1132299, and 1245204 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices") via USPS certified mail and FedEx. On December 10, 2020, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed copies of the FedEx tracking information available online for the Notices to the Customers. On December 15, 2020, Claimant filed copies of the USPS tracking information available online for the Notices to the Customers.

The Arbitrator conducted a recorded, telephonic hearing on January 14, 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, supported the request for expungement.

The customer in Occurrence Number 1245204 participated in the expungement hearing and opposed the expungement request.

The customers in Occurrence Numbers 986395, 1012411, 1113859, and 1132299, did not participate in the expungement hearing. The Arbitrator found that these 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 document for Occurrence Number 1113859, 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, that Claimant was not a party to the settlement agreement, and that Claimant did not contribute to the settlement amount. The Arbitrator also noted that the copy of the settlement document which was reviewed was not fully executed.

The Arbitrator noted that the disputes related to Occurrence Numbers 986395, 1012411, 1132299, and 1245204 were 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, the testimony of the customer in Occurrence Number 1245204, the Notices, and Claimant's Exhibits 1-16.

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 986395, 1245204, 1132299, 1012411, and 1113859 from registration records maintained by the CRD for Claimant John Francis Lynch (CRD Number 1806466) with the understanding that, pursuant to Notice to Members 04-16, Claimant John Francis Lynch 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 findings of fact for Occurrence Numbers 986395, 1245204, and 1132299:

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:

Claimant met with the customers on multiple occasions before recommending custom, balanced, and diversified portfolio options. The portfolio options were based on communications with the customers, after an analysis of their current holdings, age, investor profile and objective, time horizon, and risk tolerance. In each instance, there was full and fair disclosure after discussing the options' advantages and disadvantages, as well as the features, benefits, and fees for each option. When documents were provided, each was explained to the customer before the customer signed, affirming the customer's understanding of the investments to be purchased. The documents included applications, subscriptions, and disclosure documents, which evidenced the customers' agreement to implementing changes in the portfolios. Where relevant, a prospectus was provided and discussed. Before each purchase was approved, Respondent's compliance department reviewed the supporting documentation. At no time did Claimant guarantee performance of any investment. If the product involved an annuity, a 10-day look period was provided. Throughout each relationship, Claimant met regularly with each customer and discussed the performance of the portfolios.

Occurrence Number 986395

The Arbitrator finds that the evidence does not support the customer's claims. The great preponderance of the evidence shows that Claimant did not transfer the customer's accounts into aggressive mutual funds without the knowledgeable and experienced customer's full understanding and complete authorization, guarantee market performance, or predict any particular rate of return on a variable asset. Claimant reviewed the customer's entire portfolio and met with her numerous times before the customer chose to make the asset allocation changes, after numerous options were presented and prospectuses discussed. To accomplish the customer's goals of greater selection and more investment choices, the customer kept cash, replaced her flexible annuity with a variable annuity, and also chose several mutual fund investments within the Strategic Portfolio Services wrap account to reduce her risk of owning different individual stocks. Claimant's recommendations to the customer were suitable based upon her age, long-term investment objectives, goals of growth and income for a comfortable retirement, and her moderate to aggressive risk tolerance. Claimant explained the costs, risks, and taxes and then let the customer make every decision. It was the customer's decision to purchase the portfolio with the particular securities to meet her goals, and it was also her decision when to sell and realize losses during the short-term downward market fluctuation, instead of holding tight to achieve her long-term time horizon. For these reasons, expungement of this occurrence is recommended.

Occurrence Number 1245204

The Arbitrator finds the evidence does not support the customer's claims. The customer missed multiple opportunities to reduce her losses in the market. On numerous occasions, the customer was offered options to reallocate her portfolio to a less volatile position or make a change to reduce her market position. Instead, the customer added more proceeds into the market from the rollover of her 401(k) into the portfolio. Furthermore, she failed to follow Claimant's recommendation to not liquidate an annuity, resulting in payment of surrender charges. Finally, Claimant had absolutely no authority or discretion to sell or change any investment. For these reasons, expungement of this occurrence is recommended.

Occurrence Number 1132299

The Arbitrator finds that the evidence does not support the customer's claims. This occurrence involved a complex and diverse investment portfolio of three products. The portfolio was designed to achieve long-term investment objectives and moderate to aggressive risk tolerance, while also producing a substantial annual income stream. The investments were consistent with the customer's stated investment objectives and risk tolerance. It was the customer's frequent and excessive withdrawals, beyond her originally stated needs, which created losses in the portfolio. Claimant's testimony, supported by the evidence, was that frequent and numerous in-person meetings and telephone communications regarding the performance of the customer's portfolio took place. And, following denial of the claim, the customer apologized to Claimant saying the claim resulted from the undue influence of an investment advisor, who later became Claimant's client. Claimant's family and the customer and her family remain close. For these reasons, expungement of this occurrence is recommended.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact for Occurrence Numbers 1012411 and 1113859:

The claim, allegation, or information is factually impossible or clearly erroneous;

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

Occurrence Number 1012411

The Arbitrator finds the customers' claims are not supported by the evidence. Claimant was merely the supervisor of the junior advisor from whom the various investment products were purchased. Claimant did not have responsibility over the transactions. Claimant did not meet the customers until after the creation of their investment portfolio. Furthermore, the customers were never Claimant's clients, and Claimant never provided any financial or tax advice or made any recommendation to them. Finally, Claimant had no connection with the customers and never received compensation for any of the relevant investments. For these reasons, expungement of this occurrence is recommended.

Occurrence Number 1113859

The Arbitrator finds the evidence does not support the customers' claims. Absolutely nothing indicates Claimant had anything to do with the purchase of this policy. Claimant was not involved in the purchase of the life insurance policy or in providing any advice prior to its purchase. There is no evidence to suggest Claimant knew or had met the customers when the policy was sold. At the time, Claimant was a division vice president. He was paid a salary, and he was not allowed to share compensation with advisors. Claimant was not even located in the same city as the advisor. Furthermore, the customers were the only people with the authority to access their account and transfer money out of it. In this case, the insurance company and the financial advisor, who sold the policy to the customers, entered into a settlement agreement with the customers. Claimant was not named in the settlement, he was not involved in the settlement, and he did not contribute to it. The customers dismissed their claims against Respondent and Claimant. For these reasons, expungement of this occurrence is recommended.

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 25, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: January 14, 2021 1 session

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

Lynn Hirschfeld Brahin - 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

Lynn Hirschfeld Brahin

Lynn Hirschfeld Brahin
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)