

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Douglas L. Padden

Case Number: 20-01820

vs.

Respondent
NYLife Securities LLC

Hearing Site: Boston, Massachusetts

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 Douglas L. Padden: Stephan Louviere, Esq., Louviere Law Firm, P.A., Pompano Beach, Florida.

For Respondent NYLife Securities LLC: Richard F. Lubarsky, Esq., Lubarsky Law Firm PLLC, White Plains, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 9, 2020.

Douglas L. Padden signed the Submission Agreement: June 9, 2020.

Statement of Answer filed by Respondent on or about: August 17, 2020.

NYLife Securities LLC signed the Submission Agreement: August 6, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 1860502 and compensatory damages in the amount of \$1.00.

In the Statement of Answer, Respondent requested that Claimant's claim for \$1.00 in compensatory damages be denied, and that all forum and arbitrators' fees be assessed against Claimant.

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 19, 2020, Claimant advised that the customer in Occurrence Number 1860502 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

A telephonic expungement hearing was held on December 8, 2020. Due to an administrative oversight, this hearing was not recorded. Accordingly, the hearing was rescheduled to January 5, 2021.

The Arbitrator conducted a recorded, telephonic hearing on January 5, 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 customer did not participate in the expungement hearing. The Arbitrator found that the customer 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 not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim and exhibits A through J of Claimant's pre-hearing brief.

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 1860502 from registration records maintained by the CRD for Claimant Douglas L. Padden

(CRD Number 5331067) with the understanding that, pursuant to Notice to Members 04-16, Claimant Douglas L. Padden 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:

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:

The customer sought Claimant's advice on methods of investment of her portfolio upon her retirement. She had other income-producing instruments, i. e., a fixed annuity and social security income for both her and her husband. She also had a variable annuity which she wanted to roll over from her employer's retirement accounts. Claimant met extensively with the customer and ultimately recommended a NY Life Variable Annuity for what constituted a smaller portion of her total assets. The customer was attracted not only by the opportunity for growth but also the ability to choose conservative sub-accounts within the instrument. As her initial application to NY Life shows, that is what she received. She also wanted to be able to withdraw \$300.00 per month without any penalty; the Claimant testified that he explained that she would be able to do so without penalty. The application was submitted by Claimant to NY Life who approved it. Claimant testified that he explained to the customer that the nature of a variable annuity meant that, even with conservative investments, the total value of the instrument would fluctuate either up or down. He also testified that the customer understood, again as the application reveals, that there were fees associated with the maintenance of the accounts.

Unfortunately, due to conditions beyond Claimant's control, shortly after purchasing the annuity, the stock markets suffered serious declines which negatively impacted the value of the instrument. Consequently, the customer had several conversations with the Claimant about these developments over a period of months. Ultimately, due to the customer's continuing concern, the Claimant recommended that the customer transfer the full amount of the annuity into a cash account. However, even after doing so, the customer experienced continued loss of value because the interest paid on the accounts was less than the fees incurred. The customer continued to be dissatisfied and petitioned NY Life for a full refund of her investment including loss of principal and withdrawal fees, a total of about \$5,000. NY Life agreed, in order to avoid the cost of litigation, and issued a full refund to the customer. The Claimant testified that he played no part in the negotiation or conclusion of the settlement.

The Claimant emphasized that he made full disclosure of all risks and other aspects of the customer's investment. He also testified that he structured the investment to allow for the customer to withdraw \$300.00 per month for income without incurring any penalties

for such withdrawals. Finally, he testified that he explained to the customer that the decline in the value of her investment was due to market conditions beyond anyone's control and that if she stayed the course, the value of the annuity would return. Despite these assurances, the customer insisted that the variable annuity was an unsuitable investment demanded a full refund from NY Life.

Taking into account all of the Claimant's testimony and his submitted exhibits, the Arbitrator found that, pursuant to FINRA Rule 2080, the customer's claims are factually impossible and clearly erroneous (Rule 2080 (b) (1) (A)), and further that the claim is false (Rule 2080 (b) (1) (C)).

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

**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 event giving rise to the dispute. Accordingly, as a party, Respondent NYLife Securities LLC is assessed the following:

Member Surcharge = \$ 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 with a single Arbitrator @ \$50.00/session = \$ 50.00
Pre-hearing Conference: September 21, 2020 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$ 50.00
Hearing Date: December 8, 2020 WAIVED
January 5, 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

Howard N. Gorney

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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

Howard N. Gorney

Howard N. Gorney
Sole Public Arbitrator

01/29/2021

Signature Date

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January 29, 2021

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