

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Retina Consultants, P.C., Defined Benefit Pension Plan
Retina Consultants, P.C., as Plan Sponsor and Plan Administrator

Case Number: 20-01836

vs.

Respondents

LPL Financial LLC
Raymond Scott Benjamin
South State Bank

Hearing Site: Atlanta, Georgia

Awards are rendered by independent Panels 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, Associated Person, and Non-Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Retina Consultants, P.C., Defined Benefit Pension Plan (the “Plan”), and Retina Consultants, P.C., as Plan Sponsor and Plan Administrator: John B. Long, Esq., Tucker Long, P.C., Augusta, Georgia.

For Respondents LPL Financial LLC (“LPL”), Raymond Scott Benjamin (“Benjamin”) and South State Bank (“SSB”): W. Preston Martin, Esq., Bressler Amery Ross, P.C., Birmingham, Alabama.

*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: June 10, 2020.

Retina Consultants, P.C., Defined Benefit Pension Plan signed the Submission Agreement: June 10, 2020.

Retina Consultants, P.C., as Plan Sponsor and Plan Administrator signed the Submission Agreement: June 10, 2020.

Statement of Answer filed by Respondents LPL, Benjamin and SSB on or about: August 21, 2020.

Respondent LPL signed the Submission Agreement: July 27, 2020.

Respondent Benjamin signed the Submission Agreement: August 20, 2020.

Respondent SSB signed the Submission Agreement: August 20, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violation of the Employment Retirement Income Security Act (“ERISA”); breach of fiduciary duty; fraud; misrepresentation/non-disclosures; omission of facts; commissions; and failure to supervise. The causes of action relate to the purchase of a Hartford Variable Annuity Contract (the “Annuity”) in Claimants’ Plan.

In the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested \$3,470,533.46 in pre-litigation losses, an unspecified award of punitive damages, attorneys’ fees and expenses.

In the Statement of Answer, Respondents requested the denial of Claimants’ claims in their entirety, and Respondent Benjamin requested expungement of Occurrence Numbers 1982699 and 2024408 from his Central Registration Depository (“CRD”) records.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent SSB is not a member of FINRA, but voluntarily submitted to arbitration and having answered the claim and filed a Submission Agreement, is bound by the determination of the Panel on all issues submitted.

On June 24, 2021, Claimant filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On July 26, 2021, Respondent Benjamin filed a Motion for Expungement, to which Claimant filed an opposition on August 6, 2021. On August 16, 2021, Respondent Benjamin filed a Reply in Support of his Motion for Expungement.

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

Claimants participated in the expungement hearing and opposed the request for expungement.

The Panel reviewed Respondent Benjamin's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documentation related to this case (Occurrence Numbers 1982699 and 2024408), 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 expungement request and that Respondent Benjamin did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the testimony of Respondent Benjamin and of Claimants' fact witness and expert; emails between Respondent Benjamin and Claimants; a profitability schedule; fee schedules; and the Affidavit of Claimants' Plan Administrator, along with other exhibits.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 Numbers 1982699 and 2024408 from registration records maintained by the CRD for Respondent Raymond Scott Benjamin (CRD Number 2855278) with the understanding that, pursuant to Notice to Members 04-16, Respondent Benjamin 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 Panel has made the following Rule 2080 affirmative findings of fact:

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

The claim, allegation, or information is false.

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

The Panel finds the funds recommended by Respondent Benjamin were suitable based on Claimants' stated goals. The annuities invested in were well-diversified and resulted in a reasonable profit of \$512,859.00 from May 2, 2012, to September 30, 2016, to Claimants. The funds invested in reasonably protected Claimants from market fluctuations. The fee schedule was provided to Claimants and Claimants were provided access to the fees associated with the Plan. The fees were consistent throughout the relevant period.

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 = \$ 2,000.00

*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 LPL is assessed the following:

Member Surcharge = \$ 3,025.00
Member Process Fee = \$ 6,175.00

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

One (1) pre-hearing session with the Panel @ \$1,400.00/session = \$ 1,400.00
Pre-Hearing Conference: November 9, 2020 1 session

Two (2) hearing sessions on expungement request @ \$1,400.00/session = \$ 2,800.00
Hearing: October 26, 2021 2 sessions

Total Hearing Session Fees = \$ 4,200.00

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$2,800.00 of the hearing session fees to Respondent Benjamin.

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

ARBITRATION PANEL

Bruce W. Bennett	-	Public Panel, Presiding Chairperson
Sherri Lynne Kimmell	-	Public Panel
Carleton E. Blankenburg	-	Non-Public Panel

I, the undersigned Panel, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Bruce W. Bennett

Bruce W. Bennett
Public Arbitrator, Presiding Chairperson

11/02/2021

Signature Date

Sherri Lynne Kimmell

Sherri Lynne Kimmell
Public Arbitrator

11/02/2021

Signature Date

Carleton E. Blankenburg

Carleton E. Blankenburg
Non-Public Arbitrator

11/02/2021

Signature Date

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November 02, 2021

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