Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
William H. Nichols

vs.

Respondent
LPL Financial LLC

Case Number: 20-01894

Hearing Site: Los Angeles, 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: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant William H. Nichols ("Claimant"): Kristian Kraszewski, Esq., Kyros Law, Coral Gables, Florida.

For Respondent LPL Financial LLC ("Respondent"): Kelsey Vasko, Esq., LPL Financial LLC., San Diego, California.

CASE INFORMATION

Statement of Claim filed on or about: June 16, 2020.
Claimant signed the Submission Agreement: June 16, 2020.

Statement of Answer filed on or about: December 15, 2020
Respondent signed the Submission Agreement: November 19, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence, breach of fiduciary duty, failure to supervise, breach of contract, misrepresentation, violation of FINRA Rules of Conduct, and violation of NASD and NYSE Rules. The causes of action relate to investments in Franklin Square Energy and Power and Griffin American Healthcare REIT II.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages in the amount of $80,000.00;
2. Interest; and
3. Costs.

In the Statement of Answer, Respondent requested:

1. The Panel issue an award dismissing the Statement of Claim in its entirety;
2. Claimant recover nothing; and
3. Such other, further and separate relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 19, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On April 16, 2021, Claimant filed a response opposing the Motion to Dismiss. On May 17, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. On May 19, 2021, the Arbitrator granted the Motion to Dismiss.

Respondent's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 12206(b) of the Code.

FINDINGS

The decision to grant the Motion to Dismiss is based on the following factors:

1) Rule 12206 of the FINRA Code of Arbitration prohibits the submission of a claim after six years have elapsed from the occurrence or event that gives rise to the claim or claims. The Rule states: "No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim." The investments at issue in this matter (FES Energy and Power; Griffin American REIT) were purchased in August 2013; the Statement of Claim was filed June 16th, 2020. More than six years had elapsed.
2) Nonetheless, the Arbitrator recognized the date of purchase is NOT the only occurrence or event to be considered in determining eligibility; rather, Rule 12206 calls on arbitrators to exercise discretion and determine whether other occurrences or events gave rise to the claim(s), requiring the six-year eligibility period to begin on a date later than the purchase date. Claimant's Response (Opposition) to Respondent's motion argued that other occurrences or events should determine the window of eligibility in this case. The Arbitrator exercised discretion and pursued the question of whether or not additional occurrences or events warranted declaring a later eligibility start date.
3) The Arbitrator found Claimant's Statement of Claim failed to establish (or even mention) occurrences or events that would dictate replacing the date of purchase as the dispositive event that "started the clock" on the eligibility period. The Statement of Claim did not

specify additional occurrences or events giving rise to claims subsequent to the investment purchase dates.

4) In addition, the Arbitrator reviewed Claimant's Response to the Motion to Dismiss — and was not persuaded that additional occurrences and events took place that warranted a later eligibility start date. Also, during the May 17th recorded telephonic hearing, the Arbitrator was not persuaded by argument or testimony that the selection of a Rule 12206 eligibility start date other than the purchase date was warranted.
5) In addition, according to recorded testimony, Claimant belatedly discovered a cause for his claims in 2020, more than six years after the date of purchase and more than four years after having closed his accounts with Respondent LPL. (Accounts were transferred in February 2016.) According to testimony, current allegations of ongoing fraud and concealment arose more than six years after the date of purchase and more than four years after Claimant closed/moved his accounts because Claimant found Respondent's agent, to be "tired and worn out and in an end-of-career state." The Arbitrator experienced concern that the case, filed more than six years after the purchase date, with shifting complaints regarding Respondent, had gone "stale" in precisely the manner Rule 12206 was designed to prevent.
6) The Arbitrator did not find convincing the assertion that Respondent engaged in ongoing concealment regarding investment performance, thus creating occurrences or events that gave rise to additional claims and dictated a reset of the eligibility "clock." The Respondent disclosed risks at the time of purchase and then delivered monthly account statements, providing ongoing investment performance information. No convincing evidence of concealment was presented. Testimony noted Claimant was confused about the investment; it is possible that as years passed confusion turned into an unwarranted fear of concealment. The Arbitrator was not convinced of ongoing concealment as asserted, as the Claimant (presumably unhappy with investment performance) had moved his accounts over four years prior to filing a claim, a claim that was filed six years after the investments were purchased.
7) The Arbitrator, upon review of evidence and testimony, in a search for later occurrences and events that would justify a later start date for the 12206 eligibility period, found no such occurrences and events. The Arbitrator found the occurrence or event that gave rise to Claimant’s claims was the purchase of the investments at issue. The Arbitrator found persuasive the Respondent's argument that all events giving rise to the claim(s) took place in August 2013 at the time of the purchase of the two investments.
8) Rule 12206 codifies a contractual agreement between Broker-Dealers and Customers regarding the eligibility period during which FINRA arbitration may be convened. In this case, the Arbitrator found the dispositive occurrence or event to be the purchase date and thus found the Statement of Claim was filed outside the contractual eligibility window, rendering the claims ineligible for FINRA arbitration per the Code of Arbitration Procedure.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant’s claims are dismissed pursuant to Rule 12206 of the Code.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=$	975.00

**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 is assessed the following:

Member Surcharge	=$	1,100.00
Member Process Fee	=$	2,250.00

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:

Two (2) pre-hearing sessions with a single Arbitrator @ $450.00/session		=$	900.00
Pre-Hearing Conferences:	October 13, 2020	1 session	
	May 17, 2021	1 session	
Total Hearing Session Fees		=$	900.00

The Arbitrator has assessed $450.00 of the hearing session fees to Claimant.

The Arbitrator has assessed $450.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Gregory Douglas Stone - 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

Gregory Douglas Stone **05/21/2021**

Gregory Douglas Stone
Sole Public Arbitrator

Signature Date

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May 21, 2021
Date of Service (For FINRA Dispute Resolution Services use only)