

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

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In the Matter of the Arbitration Between:

Claimants

Jimmy D. Epley  
Jennifer Scheffer

Case Number: 20-02195

vs.

Respondent

Paul David Kuhn

Hearing Site: Las Vegas, Nevada

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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: Customer and Associated Person vs. Associated Person

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Jennifer Scheffer (“Scheffer”): Jimmy D. Epley, JD's Tax-Smart Wealth Management, Las Vegas, Nevada.

Claimant Jimmy D. Epley (“Epley”) appeared pro se.

Hereinafter, Scheffer and Epley are collectively referred to as “Claimants”.

For Respondent Paul David Kuhn (“Respondent”): Joanna M. Myers, Esq., Holley Driggs, Las Vegas, Nevada.

**CASE INFORMATION**

Statement of Claim filed on or about: July 12, 2020.

Claimants’ Reply to Respondent’s Answer and Answer to Respondent’s Counterclaims filed on or about: September 24, 2020.

Claimants signed the Submission Agreement: July 14, 2020.

Statement of Answer and Counterclaims filed by Respondent on or about: September 3, 2020.

Respondent signed the Submission Agreement: September 9, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of duty of care; defamation by slander; and unfair deceitful solicitation with false and slanderous information. The causes of action relate Respondent allegedly making false claims about Claimants.

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

In its Counterclaim, Respondent asserted the following causes of action against Epley: abuse of process; identity theft; and withholding of tax documents. The causes of action relate to Epley allegedly bringing this action as a means to retaliate against Respondent for his success in a prior FINRA arbitration award.

In the Reply to Respondent's Answer and Answer to Respondent's Counterclaims, Claimants denied the allegations made in Respondent's Statement of Answer and Counterclaims.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. Punitive damages in the amount of \$10,000.00;
2. Compensatory damages in the amount of \$40,000.00;
3. Restitution damages;
4. Injunctive relief;
5. Reimbursement for FINRA filing fees; and
5. Such other and additional relief as the Arbitrator deems just.

In the Statement of Answer, Respondent requested:

1. Claimants take nothing by reason of their Statement of Claim;
2. Statement of Claim be dismissed;
3. An award be entered in favor of Respondent and against Claimants;
4. Attorneys' fees;
5. Costs; and
6. Any further relief as the Arbitrator deems just and equitable.

In the Counterclaim, Respondent requested:

1. An award in Respondent's favor in an amount not to exceed \$50,000.00;
2. An award of all forum fees and hearing session fees in connection with this arbitration proceeding;
3. An order directing that Respondent's Central Registration Depository ("CRD") records relating to this matter be expunged; and
4. Attorneys' fees and costs.

In the Reply to Respondent's Answer and Answer to Respondent's Counterclaims, Claimants requested:

1. An award be entered in favor of Claimants and against Respondent;
2. Denial of Respondent's request for attorneys' fees and costs;
3. All relief requested in the Statement of Claim; and
4. Any further relief the Arbitrator deems just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On September 11, 2020, Respondent submitted the Occurrence Number associated with the above-captioned arbitration, which is the disclosure on his CRD records that he seeks to expunge, Occurrence Number 2083595.

On January 6, 2021, FINRA Dispute Resolution Services issued a letter stating that in order to determine Respondent's request for expungement of Occurrence Number 2083595, the Arbitrator requests that a hearing take place by videoconference.

The Arbitrator conducted a recorded hearing by videoconference on January 25, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement.

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

The Arbitrator reviewed Respondent's BrokerCheck® Report.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimants' Statement of Claim; Respondent's Statement of Answer and Counterclaims; Respondent's BrokerCheck® Report; and Respondent's Letter Regarding the Occurrence Number Associated with Expungement Request, dated January 6, 2021.

### **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:

1. Claimants' claims are denied in their entirety.
2. Respondent's Counterclaim is denied.
3. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2083595) from registration records maintained by the CRD for Respondent Paul David Kuhn (CRD Number 6122451) with the understanding that, pursuant to Notice to Members 04-16, Respondent Paul David Kuhn 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.

The claim, allegation, or information is false.

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

After a hearing on the request for expungement of Respondent's CRD records in connection with Occurrence Number 2083595, the Arbitrator finds that the request for expungement should be granted for the following reasons: Scheffer's allegations regarding an alleged breach of duty of care to her are clearly erroneous since there was no broker-client relationship between the two of them once Respondent had left the Epley firm; and her claim that any such duty of care was breached by slander and defamation is false.

Epley's allegations as to slander and defamation are deemed to be clearly erroneous since the statements made on April 29, 2019 to Scheffer were in fact true at the time they were made and Respondent promptly corrected what later turned out to be inaccuracies. Epley's allegations of unfair solicitation by slander and deceit are false because, in those instances in which Respondent's solicitations contained inaccuracies, they were relatively minor in nature and it was not proved to the Arbitrator's satisfaction that Epley suffered any damage as a result.

In conclusion, this dispute was the only negative mark reflected in Respondent's BrokerCheck® Report, and in the opinion of the Arbitrator, maintaining this customer dispute information on Respondent's CRD records would not have any meaningful investor protection or regulatory value.

4. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
5. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Respondent deposited previously.
6. All parties shall bear their own attorneys' fees.
7. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, 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	=\$	600.00
Counterclaim Filing Fee	=\$	600.00

*\*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 Respondent's former firm, Avantax Investment Services, Inc. is assessed the following:

Member Surcharge	= \$	750.00
Member Process Fee	= \$	1,750.00

**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) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing: January 25, 2021 1 session		
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Total Hearing Session Fees	= \$	450.00

The Arbitrator has assessed the total hearing session fees to Respondent.

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

**ARBITRATOR**

Joseph Winter

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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**

***Joseph Winter***

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Joseph Winter  
Sole Public Arbitrator

**02/10/2021**

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Signature Date

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February 10, 2021

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