

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

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In the Matter of the Arbitration Between:

Claimant

Gregory Zeifman, an individual

Case Number: 20-02218

vs.

Respondent

LPL Financial LLC, a California limited liability company

Hearing Site: Boca Raton, Florida

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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 vs. Member

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Gregory Zeifman, an individual: David C. Silver, Esq., Silver Miller, Coral Springs, Florida.

For Respondent LPL Financial LLC, a California limited liability company: Amy B. Bard, Esq., Law Office of Amy Bard, Glen Ridge, New Jersey.

\*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant's counsel appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: July 14, 2020.

Gregory Zeifman signed the Submission Agreement: July 14, 2020.

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

LPL Financial LLC signed the Submission Agreement: September 18, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: negligence; breach of fiduciary duty; breach of contract; and negligent failure to supervise. The causes of action relate to Claimant's investment in Highland Floating Rate Opportunities Fund II – Class A ("HFRAX").

Unless specifically admitted 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: compensatory damages in an amount between \$100,000.00 and \$500,000.00, or any greater amount, according to proof to be offered at the final hearing; pre-judgment interest; attorneys' fees; costs of this proceeding; and such other relief as the Panel deemed just and proper.

In the Statement of Answer, Respondent requested: dismissal of Claimant's Statement of Claim in its entirety; that Claimant recover nothing; and such other, further and separate relief as the Panel deemed appropriate.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about February 11, 2021, Claimant filed with FINRA Dispute Resolution Services 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 or about February 11, 2021 and February 26, 2021, Respondent filed with FINRA Dispute Resolution Services notices requesting that the file remain open in order for the Panel to consider a request for expungement.

On or about April 29, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Charles W. Turner ("Turner"), to which no response was filed.

On or about May 24, 2021, Claimant filed with FINRA Dispute Resolution Services a notice advising he would not be participating in the expungement hearing.

The Panel conducted a recorded hearing by videoconference on June 4, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Turner.

At the expungement hearing, the Panel requested a post-hearing submission.

Claimant did not participate in the expungement hearing. The Panel found that Claimant had notice of the expungement request and hearing.

The Panel reviewed the BrokerCheck® Report for Unnamed Party Turner. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documentation related to Occurrence Numbers 2082622 and 2094049, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Panel noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Unnamed Party Turner did not contribute to the settlement amounts.

On or about June 18, 2021, Claimant filed with FINRA Dispute Resolution Services a post-hearing submission.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Unnamed Party Turner's testimony; Statement of Account for October of 2017; Respondent's New Account Form; Acknowledgement of Concentrated Securities document; trading history for April of 2020; Respondent's Statement Activity Summary; Settlement Agreement and Release related to Occurrence Number 2082622; and Settlement Agreement and Mutual General Release related to Occurrence Number 2094049.

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

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the 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 the above-captioned arbitration (Occurrence Numbers 2082622 and 2094049) from registration records maintained by the CRD for Unnamed Party Turner (CRD Number 4152030) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Turner 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 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The two issues raised by Respondent on behalf of Unnamed Party Turner were that the investment in HFRAX was unsuitable, and that the investment was overconcentrated in

Claimant's portfolio. The investment was not unsuitable because Claimant could have gotten out of the fund at any time, the fund paid dividends, the fund was not speculative, the fund was backed by real estate, the fund was a liquid mutual fund and Claimant was a sophisticated investor. The investment was not overconcentrated because Claimant had the specific intent to diversify the amount represented by the investment when the shares would be sold after a lawsuit that was expected to bring a large gain to the investment, because Claimant signed a concentrated securities position document and because the investment represented only a small portion of Claimant's total net worth. Thus, the allegations of unsuitability and overconcentration were false.

### **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	= \$	1,425.00
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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 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 is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

#### **Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

November 17, 2020, cancellation requested by Claimant and Respondent	= \$	300.00
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Total Late Pre-Hearing Cancellation Fees	= \$	300.00
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The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Respondent.

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

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: June 4, 2021 1 session		
Total Hearing Session Fees	= \$	1,125.00

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

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

**ARBITRATION PANEL**

Gloria O. North	-	Public Arbitrator, Presiding Chairperson
Martin A. Feigenbaum	-	Public Arbitrator
Joseph A. Vallo	-	Non-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.

**Concurring Arbitrators' Signatures**

***Gloria O. North***

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Gloria O. North  
Public Arbitrator, Presiding Chairperson

**06/23/2021**

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Signature Date

***Martin A. Feigenbaum***

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Martin A. Feigenbaum  
Public Arbitrator

**06/22/2021**

\_\_\_\_\_  
Signature Date

***Joseph A. Vallo***

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Joseph A. Vallo  
Non-Public Arbitrator

**06/22/2021**

\_\_\_\_\_  
Signature Date

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June 23, 2021

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