

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Michael Scott McCranie

Case Number: 20-02257

vs.

Respondent

LPL Financial LLC

Hearing Site: Jacksonville, Florida

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 Michael Scott McCranie (“Claimant”): Brandon M. Taaffe, Esq., Shumaker, Loop & Kendrick, LLP, Sarasota, Florida.

For Respondent LPL Financial LLC (“Respondent”): Eleonora Yonge, Esq., LPL Financial LLC, San Diego, California.

CASE INFORMATION

Statement of Claim filed on or about: July 17, 2020.

Claimant signed the Submission Agreement: July 17, 2020.

Statement of Answer filed on or about: September 21, 2020.

Respondent signed the Submission Agreement: September 15, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1508851.

In the Statement of Answer, Respondent did not request any relief.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 28, 2020, Claimant advised that the customer in Occurrence Number 1508851 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing (“Notice”). On December 29, 2020, Claimant filed a copy of the FedEx delivery confirmation for the Notice.

The Panel conducted a recorded, telephonic hearing on February 4, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

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

The Panel reviewed Claimant’s BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payments 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 Claimant did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim, Statement of Answer, the Notice, and Claimant’s Exhibits 1-40.

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:

The Panel recommends the expungement of all references to Occurrence Number 1508851 from registration records maintained by the CRD for Claimant Michael Scott McCranie (CRD Number 1536627) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael Scott McCranie 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; and

The claim, allegation, or information is false.

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

The Customer was a sophisticated, high net worth individual who had significant accounts with other brokerage firms, 20 years of investment experience, and previous experience with variable annuities. She was, in all respects, properly advised by Claimant as to the investments in her account with Respondent. Prior to the relevant annuity purchases, Claimant had 14 meetings with the Customer in one year and each meeting was for two to three hours. The initial due diligence/data gathering meeting was three and a half hours long.

The Customer had a complex estate. The preliminary and on-going meetings, during the term of the relationship, involved estate planning issues with alternative estate flow charts for investment alternatives, investment objectives, fees, and the Customer’s concerns. Claimant provided the Customer with various alternative investment approaches to address a significant estate tax exposure of the Customer in her total estate. At many times, but at least in June 2007 (prior to the annuity purchases), a fee and commission disclosure was provided to the Customer. Also, the Customer signed account forms and subscription agreements, explaining the investment risks, and received the prospectuses, as required.

The only investments before the Panel are those within the Customer’s credit shelter trust which was comprised of two variable annuities, accounting for approximately 23% of the liquid assets managed by the Customer. The Customer’s account objectives were initially income and moderate growth but changed to income with capital preservation, as indicated by the Customer’s signed new account application. The underlying sub-account allocation of 20% equities and 80% bonds was consistent with these objectives and in no manner unsuitable for the Customer.

The Panel finds that the Customer was provided with alternative strategies and that, although the selected strategy carried the highest commissions, the Customer personally made this choice. The Panel finds no evidence that commission generation was Claimant’s motivation in making the recommendation. Of the two annuities purchased, the Customer, contrary to Claimant’s recommendation, purchased the ING annuity following her own independent research. She had a detailed meeting with Claimant to discuss how fees were charged. At that time, and again in September 2007 and thereafter, fees and investments were discussed, and prospectuses were provided. The meetings resulted in Claimant and Respondent arranging for a reduced fee schedule, which made the fees charged lower than was customary for that type of investment. The Customer was actively involved in the discussion of fees, was informed, and already knew upfront that the fees would be higher than the typical trading or management fees in an account.

At the hearing, Respondent supported Claimant's expungement request and represented that the occurrence was reported, as required, despite a belief that, in this instance, the reported allegations, as made by the Customer, were more likely to mislead the investing public than to inform it. Respondent settled the Customer dispute for 12.5% of the alleged compensatory damages to avoid further costs and business distraction.

The CRD reporting of the Customer's claim does a disservice to the investing public, regulators, and Claimant as it is false and clearly erroneous.

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 = \$ 1,575.00

**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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

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

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

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: November 17, 2020 1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: February 4, 2021 1 session	
Total Hearing Session Fees	= \$ 2,250.00

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

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

ARBITRATION PANEL

John P. Cullem	-	Public Arbitrator, Presiding Chairperson
Mitchel Weiss	-	Public Arbitrator
Joan Stearns Johnsen	-	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

John P. Cullem

John P. Cullem
Public Arbitrator, Presiding Chairperson

02/17/2021

Signature Date

Mitchel Weiss

Mitchel Weiss
Public Arbitrator

02/16/2021

Signature Date

Joan Stearns Johnsen

Joan Stearns Johnsen
Non-Public Arbitrator

02/16/2021

Signature Date

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February 17, 2021

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