

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

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In the Matter of the Arbitration Between:

Claimant  
Brian Scott Palkowitsh

Case Number: 20-02514

vs.

Respondents  
Transamerica Financial Advisors, Inc.  
and Transamerica Financial Advisors, Inc.

Hearing Site: Wichita, Kansas

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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: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

For Claimant Brian Scott Palkowitsh (“Claimant”): Michael O’Gara, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondents Transamerica Financial Advisors, Inc. (CRD Number 16164) (“TFA”) and Transamerica Financial Advisors, Inc. f/k/a Transamerica Financial Resources, Inc. (CRD Number 3600) (collectively, “TFA”): Susan D. Duff, Esq., Transamerica Financial Advisors, Inc., St. Petersburg, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: August 6, 2020.  
Claimant signed the Submission Agreement: August 5, 2020.

Statement of Answer filed on or about: September 25, 2020.  
TFA signed the Submission Agreement: August 17, 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, TFA took no position on Claimant’s expungement request and denied any wrongdoing.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1092334, 1693258, 1971532, and 1975602; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, TFA opposed Claimant's request for monetary relief and requested that Claimant pay all forum fees in connection with this matter.

At the hearing, Claimant withdrew the request for \$1.00 in compensatory damages.

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

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

On March 16, 2021, Claimant advised that the customers in Occurrence Numbers 1092334 and 1693258 (each a "Customer" and, collectively, "Customers") and the heir ("Heir") of the customer in Occurrence Numbers 1971532 and 1975602 were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). Claimant also filed a Death Record for the customer in Occurrence Number 1971532. On March 22, 2021, Claimant filed an Affidavit confirming that the Customers and Heir were served with the Notices. Claimant also filed a copy of the FedEx tracking information available online for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on April 26, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

TFA participated in the expungement hearing and, as stated in the Statement of Answer, took no position on the request for expungement.

The Customers and Heir did not participate in the expungement hearing. The Arbitrator found that the Customers and Heir had notice of the expungement request and hearing.

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

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1693258 and 1975602, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request. The Arbitrator also noted that Claimant contributed to the settlement amount related to Occurrence Number 1693258 but did not contribute to the settlement amount related to Occurrence Number 1975602.

The Arbitrator noted that the disputes related to Occurrence Numbers 1092334 and 1971532 were not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and Claimant's Exhibits A - L.

## **AWARD**

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

1. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1092334, 1693258, 1971532, and 1975602 from registration records maintained by the CRD for Claimant Brian Scott Palkowitsh (CRD Number 2702781) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brian Scott Palkowitsh 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; and

The claim, allegation, or information is false.

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

### **Occurrence Number 1092334**

Claimant testified that the bonds were investment grade when issued and declined in value because of the bankruptcy of the issuer; that the bonds were suitable for the Customer’s risk tolerance and investment objective; that Claimant fully explained the bonds and provided all written disclosures; and that the Customer had prior experience in bond investments, selected the bonds from several presented, and acknowledged his understanding of the details and authorized the investments. Further, Claimant testified that he reviewed the bonds periodically with the Customer after the purchase and that the Customer had not expressed any dissatisfaction with them. After completing an investigation, TFA denied the Customer’s claim, finding it to be without merit as Claimant had fully explained to the Customer the details of the bonds, including the fact that the market value of corporate bonds could fluctuate. The Customer received stock in a successor company after the bankruptcy, which compensated the Customer, in large part, for the loss.

This dispute did not arise out of any alleged misrepresentation on the part of Claimant. Rather, this dispute appears to have arisen out of the Customer’s dissatisfaction with the decline in value of the bonds, which was caused by the mismanagement and fraudulent accounting practices of WorldCom.

### **Occurrence Number 1693258**

The Customer purchased an annuity (“Original Annuity”) and made an additional deposit, after the time specified in the contract for adding to the Minimum Guaranteed Income

Benefit base. The Customer later transferred the amount of the additional deposit from the Original Annuity to a new annuity (“New Annuity”). As a result, the Original Annuity issuer reduced the benefit base by the amount transferred to the New Annuity.

Claimant testified that the recommendation to purchase the Original Annuity was one of several recommendations that he and another representative made to the Customer, which were in keeping with her risk tolerance and investment needs. After the purchase of the Original Annuity, Claimant met semi-annually with the Customer to review the quarterly statements. Also, he and the other representative met with the Customer and thoroughly explained the provisions for the purchase of the Original Annuity and the transfer to the New Annuity. The Customer agreed to both transactions and received the disclosures and signed the agreements for both annuities.

The Customer was provided with written materials pertaining to the Original Annuity, including the prospectus, which fully explained the five-year window for adding to the benefit base. Further, the Customer acknowledged her understanding of the terms and authorized the additional deposit into the Original Annuity with the knowledge that it might miss the time limit. Claimant also testified that the transfer of funds from the Original Annuity to the New Annuity was discussed with the Customer. She decided to do the transfer knowing that it was close to the time limit and might affect the Original Annuity’s benefit base.

**Occurrence Numbers 1971532 and 1975602**

Claimant explained the details of the annuity to the Heir and told the Heir, on several occasions, that withdrawals would reduce the benefit. Additionally, the Heir and his family were provided with written materials pertaining to the investment. The Heir and his family members completed and signed disclosure documents, wherein they affirmed their understanding of the annuity, including the death benefit. The Heir and his family acknowledged their understanding of the details and authorized the investment.

This dispute did not arise out of any alleged misrepresentation on the part of Claimant. Rather, this dispute appears to have arisen out of the Heir’s dissatisfaction, in spite of the written disclosures and Claimant’s full explanation of this feature to the Heir, with the reduction in value of the annuity death benefit due to quarterly withdrawals that the Heir took from the annuity, which were over and above the allowed amount.

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 = \$ 50.00

*\*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, TFA is assessed the following:

Member Surcharge = \$ 150.00

**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) pre-hearing session @ \$50.00/session = \$ 50.00  
Pre-Hearing Conference: December 1, 2020 1 session

One (1) hearing session on expungement request @ 50.00/session = \$ 50.00  
Hearing: April 26, 2021 1 session

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Total Hearing Session Fees = \$ 100.00

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

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

**ARBITRATOR**

Joseph Neal Richardson

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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 Neal Richardson***

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Joseph Neal Richardson  
Sole Public Arbitrator

**05/10/2021**

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Signature Date

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.

May 10, 2021

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