

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
William Henry Kumm, IV

Case Number: 20-02587

vs.

Respondent
National Planning Corporation

Hearing Site: Detroit, Michigan

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 William Henry Kumm, IV (“Claimant”): Frances Menzer, Esq., HLBS Law, Westminster, Colorado.

For Respondent National Planning Corporation (“Respondent”): Eric A. Michaels, Esq. and Piotr Krypciak, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: August 12, 2020.
Amended Statement of Claim filed on or about: September 15, 2020.
Claimant signed the Submission Agreement: August 11, 2020.

Statement of Answer filed on or about: September 29, 2020.
Respondent signed the Submission Agreement: September 28, 2020 and April 27, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of Occurrence

Number 1564436, 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, Respondent opposed Claimant's request for monetary relief and requested that Claimant bear all fees and costs associated with the proceedings.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 2, 2021, Claimant advised that the customer in Occurrence Number 1564436 ("Customer") was served with the Amended Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On March 8, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. On March 16, 2021, Claimant filed the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on April 27, 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 Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1564436, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator 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 Arbitrator relied upon the following documentary or other evidence: Claimant's testimony and exhibits.

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 Number 1564436 from registration records maintained by the CRD for Claimant William Henry Kumm, IV (CRD Number 1709243) with the understanding that, pursuant to Notice to

Members 04-16, Claimant William Henry Kumm, IV 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:

In 2004, the Customer sought retirement advice from Claimant. The Customer had a high net worth. Based on the Customer’s investor profile and investment objectives, Claimant recommended a variety of investments, as part of a balanced, diversified portfolio, including a real estate investment trust (REIT). Claimant explained to the Customer the terms, risks, costs, fees, advantages, and disadvantages of the REIT. In 2005, the Customer purchased the REIT. The REIT was less than ten percent of his investable assets. The Customer completed and signed subscription and disclosure documents. He reviewed the REIT application and affirmed his understanding of the REIT in writing. The Customer attested that he met the suitability requirements of the REIT, understood the REIT was not a liquid investment, and understood the REIT was not a guaranteed investment. As a result of the 2008 financial crisis, the REIT declined in value.

Public disclosure of the Customer’s allegation does not offer any public protection and has no regulatory value. Claimant’s recommendation was in furtherance of the Customer’s investment objectives. Claimant explained the details of the REIT to the Customer. The Customer was provided with written materials pertaining to the investment. The Customer acknowledged his understanding of the details and authorized the investment. Further, the decline in the REIT’s value was caused by the 2008 financial crisis, an event which Claimant could neither have predicted nor affected.

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
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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 = \$ 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: January 6, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: April 27, 2021 1 session

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

Lee Hornberger

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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

Lee Hornberger

Lee Hornberger
Sole Public Arbitrator

04/29/2021

Signature Date

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April 29, 2021

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