

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

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In the Matter of the Arbitration Between:

Claimant  
Kurt Peter Kempkes

Case Number: 20-02668

vs.

Respondent  
J.P. Morgan Securities LLC

Hearing Site: New York, New York

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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. Member.

**REPRESENTATION OF PARTIES**

For Claimant Kurt Peter Kempkes: Dochter Kennedy, MBA, J.D., and Kurt Zimmerman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent J.P. Morgan Securities, LLC: Thomas J. Cahill, Esq., Duane Morris LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: August 18, 2020.  
Claimant signed the Submission Agreement: August 18, 2020.

Statement of Answer filed by Respondent on or about: October 29, 2020.  
J.P. Morgan Securities LLC signed the Submission Agreement: November 2, 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 denied any inappropriate reporting and took no position on Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2061604; compensatory damages in the amount of \$1.00; and any and all other relief that the Arbitrator deems just and equitable.

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 January 21, 2021, Claimant filed an Affidavit stating that the customer in Occurrence Number 2061604 was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 27, 2021 so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and 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 2061604, 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: internal notes of the complaint, Federal and New York State income tax summaries, email concerning gains, email concerning recommendations, correspondence to the customer regarding reimbursement of taxes, the settlement agreement, and Claimant's testimony.

### **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 2061604 from registration records maintained by the CRD for Claimant Kurt Peter Kempkes (CRD Number 5366233) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kurt Peter Kempkes 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:

The Arbitrator found that the customer’s allegations of “poor recommendation/poor advice regarding common stock investments” are clearly erroneous and also false. The customer brought a portfolio of over \$20,000,000.00 of securities to the firm which employed Claimant. Two years after Claimant had left the firm, the customer complained of some \$25,000.00 of capital gains tax as a result of rebalancing the original portfolio. Claimant, his team, as well as the firm with which they were registered, specifically informed the customer that tax advice was not a provided service. However, in order to have a more complete understanding of the original portfolio, Claimant and his team requested tax basis information for all portfolio securities delivered to the firm. This information was requested many times from both the customer and her accountant. After waiting two years, some, but not all tax basis information was received. During this time, no purchases or sales were made. During this time, no fees were charged. After waiting two years, Claimant and his team were informed that no more tax information would be supplied. Only then were purchases and sales transactions initiated. Before each transaction, Claimant and his team carefully researched the issuers and specific class of securities recommended. They also considered economic, industry, sector, market, concentration, suitability, and other data. Claimant and his team made a thorough and exhaustive review of the customer’s portfolio and provided suitable recommendations to the customer. There was no poor recommendation/poor advice regarding common stock investments. At all times, recommendations were appropriate in view of the data available and the needs of the customer.

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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent J.P. Morgan Securities LLC 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session = \$ 100.00  
Pre-Hearing Conferences: December 14, 2020 1 session  
January 6, 2021 1 session

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

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Total Hearing Session Fees = \$ 150.00

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**

Roger M. Deitz

- Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

***Roger M. Deitz***

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Roger M. Deitz  
Sole Public Arbitrator

**02/19/2021**

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Signature Date

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February 19, 2021

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