

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

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In the Matter of the Arbitration Between:

Claimant  
Ralph Lamar Barden

Case Number: 20-02672

vs.

Respondent  
Park Avenue Securities LLC

Hearing Site: Atlanta, Georgia

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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 Ralph Lamar Barden (“Claimant”): Erika Binnix, Esq. and Doctor Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Park Avenue Securities LLC (“Respondent”): Kristin L. Wynne, Esq., The Guardian Life Insurance Company of America, Holmdel, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: August 19, 2020.  
Claimant signed the Submission Agreement: August 18, 2020.

Statement of Answer filed on or about: September 9, 2020.  
Respondent signed the Submission Agreement: September 10, 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 wrongdoing but did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1283624 and 1359767, 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.

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 December 8, 2020, Claimant advised that the customers in Occurrence Numbers 1283624 and 1359767 ("Customers") were served with the Statement of Claim and notices of the date and time of the expungement hearing ("Notices"). On December 15, 2020, Claimant filed an Affidavit confirming that the Customers were served with the Notices. Claimant also filed copies of the FedEx tracking information available online for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on February 1, 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 Customers did not participate in the expungement hearing. The Arbitrator found that the Customers 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 for Occurrence Number 1359767, 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.

The Arbitrator noted that the dispute related to Occurrence Number 1283624 was 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, Claimant's Pre-Hearing Brief, and Claimant's Expungement Hearing 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 Numbers 1283624 and 1359767 from registration records maintained by the CRD for Claimant Ralph Lamar Barden (CRD Number 1571020) with the understanding that, pursuant to Notice to Members 04-16, Claimant Ralph Lamar Barden 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 finding of fact:

The claim, allegation, or information is false.

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

**Occurrence Number 1283624**

The allegation of misrepresentation by the customers is false because Claimant explained the details of the Guardian Variable Universal Life policies (“Guardian VULs”) to the customers. Additionally, the customers were provided with written materials pertaining to the investments. The customers affirmed their understanding of the Guardian VULs in writing, in multiple documents, which included their acknowledgment of the fact that the Guardian VULs were life insurance products. The customers acknowledged their understanding of the details and authorized the investments.

**Occurrence Number 1359767**

The allegation of misrepresentation is false because this dispute did not arise out of any alleged misrepresentation on the part of Claimant. Rather, this dispute arose out of the customer’s dissatisfaction with the decline in value of the Guardian Annuity, which was caused by the effects of market instability in the early 2000s, as well as the customer’s insistence upon continuing his regular monthly withdrawals at the maximum allowable rate, despite Claimant’s advice.

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 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 = \$ 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 4, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00  
Hearing Date: February 1, 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**

Lita S. Menkin - 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**

***Lita S Menkin***

Lita S. Menkin  
Sole Public Arbitrator

**02/03/2021**

Signature Date

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February 03, 2021

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