

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

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In the Matter of the Arbitration Between:

Claimant  
David Keith Brown

Case Number: 20-02699

vs.

Respondents  
Park Avenue Securities LLC  
LPL Financial LLC

Hearing Site: San Francisco, California

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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 David Keith Brown (“Claimant”): Chelsea Masters, Esq., HLBS Law, Westminster, Colorado.

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

For Respondent LPL Financial LLC (“LPL”): Sara B. Davis, Esq., LPL Financial LLC, Boston, Massachusetts.

Park Avenue and LPL are hereinafter collectively referred to as “Respondents.”

**CASE INFORMATION**

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

Statement of Answer filed by Park Avenue on or about: September 24, 2020.  
Park Avenue signed the Submission Agreement: October 1, 2020.

Statement of Answer filed by LPL on or about: October 12, 2020.  
LPL signed the Submission Agreement: October 12, 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, Park Avenue did not oppose Claimant's expungement request.

In the Statement of Answer, LPL did not oppose Claimant's expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1185507 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
  - a. the claim, allegation or information is factually impossible or clearly erroneous; and/or
  - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; and/or
  - c. the claim, allegation or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondents; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Park Avenue requested denial of any relief, including monetary relief from Park Avenue.

In the Statement of Answer, LPL did not set forth any specific request for relief.

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 5, 2021, Claimant filed an Affidavit confirming that the customer in Occurrence Number 1185507 ("Customer") 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 March 4, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents participated in the expungement hearing and, as stated in their 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 noted that the dispute related to Occurrence Number 1185507 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; Claimant's exhibits; LPL's Statement of Answer; 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 1185507 from registration records maintained by the CRD for Claimant David Keith Brown (CRD Number 2238374) with the understanding that, pursuant to Notice to Members 04-16, Claimant David Keith Brown 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.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds.

The claim, allegation or information is false.

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

On August 27, 2003, the Customer alleged "unsuitable investments" between October 2000 and March 2003. The Customer sought compensatory damages in the amount \$21,743.65.

In 1998, the Customer became a client of Ms. L, a broker with LPL. Based on the Customer's investor profile and objectives, Ms. L recommended a variable annuity. Ms. L explained in detail all of the costs, fees, risks, terms, features and benefits of the variable annuity. In 1998, the Customer purchased the variable annuity.

In June 2001, Claimant left Park Avenue, became registered with LPL, and assumed the role of Office of Supervisory Jurisdiction ("OSJ") for Ms. L. In 2001, the Customer met with a credit union registered representative who told the Customer that she could easily earn more than 12% from her investments annually. Both Claimant and Ms. L informed the Customer that level of income was not sustainable. Between 2000

and 2002, as a result of the overall market decline at the time, the value of the Customer's annuity declined.

The Customer's claim of unsuitable investments between October 2000 and March 2003 is clearly erroneous and false, meeting FINRA Rules 2080(b)(1)(A) and 2080(b)(1)(C) because Claimant's conduct was in accordance with the standards of FINRA Rule 2111 at all times as Claimant had a reasonable basis to believe that Ms. L's investment recommendations were suitable for the Customer based on the reasonable diligence of Claimant and LPL to ascertain the Customer's investor profile. Furthermore, the claim is clearly erroneous because the suitability of an investment is determined at the time when an investment is made, a future event, such as decline in value amid the overall market decline from 2000 to 2002 cannot and does not retroactively render an investment unsuitable at the time when it was made.

Claimant is also eligible for expungement pursuant to FINRA Rule 2080(b)(1)(B). The annuity at issue in this case was purchased by the Customer through Ms. L prior to the time when Claimant joined LPL as OSJ for Ms. L. Therefore, Claimant had no involvement in the determination of its suitability.

LPL does not oppose Claimant's request for expungement. At the time, they promptly and thoroughly investigated the Customer's complaint and found no evidence to support any of her claims. The Customer did not pursue her claim in arbitration or court.

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 parties, Respondents are each assessed the following:

Member Surcharge	= \$	150.00
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#### **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 with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: December 7, 2020	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: March 4, 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**

Laurel Littman Gothelf

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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**

***Laurel Littman Gothelf***

Laurel Littman Gothelf  
Sole Public Arbitrator

**03/26/2021**

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.

March 26, 2021

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