

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Wayne David Wagner, Jr.

Case Number: 20-02700

vs.

Respondent

LPL Financial LLC

Hearing Site: Wilmington, Delaware

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 Wayne David Wagner, Jr.: Dochter Kennedy, MBA, J.D., and Harris Freedman, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent LPL Financial LLC: Sara B. Davis, Esq., LPL Financial, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: August 19, 2020.

Wayne David Wagner, Jr. signed the Submission Agreement: August 19, 2020.

Statement of Answer filed by Respondent on or about: October 9, 2020

LPL Financial LLC signed the Submission Agreement: October 8, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2032696; 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 requested that Claimant's claim for \$1.00 in compensatory damages be denied.

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 February 17, 2021, Claimant advised that the customer in Occurrence Number 2032696 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 May 24, 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 2032696, 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: the customer's new account documents, the Statement of Claim, Respondent's Answer to the Statement of Claim, the settlement agreement, documents concerning the investments recommended by Claimant (and purchased by the customer), account documents and disclosure documents from the investments, and Claimant's BrokerCheck® Report.

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 2032696 from registration records maintained by the CRD for Claimant Wayne David Wagner, Jr. (CRD Number 2736605) with the understanding that, pursuant to Notice to

Members 04-16, Claimant Wayne David Wagner, Jr. 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:

The customer complaint at issue related to an arbitration case. Claimant was not named as a party to the arbitration and was not involved in the settlement of that case. Claimant serviced the customer for a number of years. The customer filed the arbitration several years after the sale of the customer’s large concentrated position in a security was sold with authorization (this was a non-discretionary account). The value of that security ultimately increased significantly over the years. Claimant recommended to the customer that there be more diversification in the portfolio to meet the customer’s investment objectives. Ultimately, the customer had a net positive result in the accounts even though one of the securities recommended by Claimant did not perform well. Respondent LPL Financial, LLC (“LPL”) properly reported the arbitration on Claimant’s CRD. LPL, which settled the arbitration without consulting Claimant, affirmatively supported Claimant’s application for expungement. The crux of the arbitration was that Claimant sold unsuitable securities to the customer and engaged in unauthorized transactions. The Arbitrator reviewed the customer’s new account documents, Statement of Claim, LPL’s Answer, the Settlement Agreement, documents concerning the investments recommended by Wagner (and purchased by the customer), account documents, and disclosure documents from the investments. The Arbitrator also reviewed Wagner’s BrokerCheck report. Based upon the testimonial and documentary evidence presented at the hearing, it appears that the securities were suitable for the customer within the context of the overall portfolio. The evidence is also clear that there were no unauthorized transactions.

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 event giving rise to the dispute. Accordingly, as a party, Respondent LPL Financial 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:

One (1) pre-hearing session with the Arbitrator @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: January 22, 2021 1 session

One (1) hearing session on expungement request @ \$50.00/session = \$ 50.00
Hearing: May 24, 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

Louis H Miron

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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

Louis H Miron

Louis H Miron
Sole Public Arbitrator

06/14/2021

Signature Date

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June 14, 2021

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