

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Howard John Saxauer

Case Number: 20-02710

vs.

Respondent
LPL Financial LLC

Hearing Site: Las Vegas, Nevada

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 Howard John Saxauer (“Claimant”): Dochter Kennedy, MBA, J.D., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent LPL Financial LLC (“Respondent”): Jon Kaplon, Esq., LPL Financial LLC, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: August 20, 2020.
Amended Statement of Claim filed on or about: December 14, 2020.
Claimant signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent on or about: October 9, 2020.
Respondent signed the Submission Agreement: October 9, 2020.

CASE SUMMARY

In the Statement of Claim and the Amended 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:

1. Expungement of Occurrence Number 1289717 from Claimant's CRD records pursuant to FINRA Rule, 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 Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Claim, as Amended, Claimant requested:

1. Expungement of Occurrence Number 1289717 from Claimant's CRD records pursuant to FINRA Rule 2080 (b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Number 1289717 from Claimant's CRD records pursuant to FINRA Rule 2080 (b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all disclosure reporting pages accompanying occurrence number 1289717;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent opposed Claimant's request for monetary damages.

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 December 14, 2020, Claimant filed a motion to amend the Statement of Claim, to which no response was filed. The Arbitrator granted the motion.

On February 15, 2021, Claimant filed an Affidavit confirming that the customers in Occurrence Number 1289717 ("Customers") were 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 16, 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 occurrence in the CRD.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1289717 ("Settlement Agreement") due to the length of time since the settlement occurred. Claimant and Respondent submitted written confirmation that they were unable to locate and produce the Settlement Agreement. The Arbitrator reviewed Claimant's BrokerCheck® Report and CRD records for the settlement amount. Based on Claimant's testimony, 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 from Claimant's testimony that Claimant did not participate in the settlement and Respondent required Claimant to contribute his insurance deductible.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; Claimant's BrokerCheck® Report; and Claimant's CRD records.

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 1289717 from registration records maintained by the CRD for Claimant Howard John Saxauer (CRD Number 1519391) with the understanding that, pursuant to Notice to Members 04-16, Claimant Howard John Saxauer 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 factually impossible or clearly erroneous.

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

Claimant fully explained the risks associated with the investment to the Customers and the Customers acknowledged in writing that they received and reviewed the prospectus and understood the terms of the investment, an annuity. The Customers directed that the investment be made in domestic equities. The loss of value was attributed to the 2000 stock market adjustment, in fact, the Customers' losses were mitigated by accepting Claimant's recommendation to change part of the asset allocation, as authorized by the terms of the annuity, to cash. The Arbitrator finds that the investments were not unsuitable and that the other allegations in the Customers' claim were erroneous.

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
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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 4, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: March 16, 2021	1 session	

Total Hearing Session Fees	= \$	100.00
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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

Benjamin F. Breslauer

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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

Benjamin F. Breslauer

Benjamin F. Breslauer
Sole Public Arbitrator

04/07/2021

Signature Date

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April 08, 2021

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