

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

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In the Matter of the Arbitration Between:

Claimant  
Robin Tom Naylor

Case Number: 20-02728

vs.

Respondent  
Pacific West Securities, Inc.

Hearing Site: Seattle, Washington

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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 Robin Tom Naylor (“Claimant”): Dochter Kennedy, MBA, J.D., Zachary Morse, Esq., and Benjamin Winograd, Esq., AdvisorLaw, LLC, Westminster, Colorado.

Respondent Pacific West Securities, Inc. (“Respondent”) did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: August 20, 2020.

Claimant signed the Submission Agreement: August 20, 2020.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

**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”).

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1601020 and 1626371 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 with 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.

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.

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and is bound by the determination of the Arbitrator on all issues submitted.

Respondent did not file a Statement of Answer. The Arbitrator determined that Respondent was served with the Claim Notification letter dated August 21, 2020 by certified regular mail and FedEx, as evidenced by the FedEx tracking information available online and the signed signature card; and the Overdue Notice (including the Statement of Claim) dated October 14, 2020 by certified regular mail and FedEx, as evidenced by the FedEx tracking information available online. The Arbitrator also determined that Respondent was served with the Notification of Arbitrator dated November 10, 2020 by certified regular mail and FedEx, as evidenced by the FedEx tracking information available online. The Arbitrator determined that Respondent is, therefore, bound by the Arbitrator’s ruling and determination.

The Claim Notification letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent failed to register for the DR Portal.

On July 14, 2021, Claimant advised that the customers in Occurrence Numbers 1601020 (“Mr. and Mrs. P”) and 1626371 (“Mr. and Mrs. W”) were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. P, Mrs. P, Mr. W, and Mrs. W are collectively referred to as “Customers”.

On July 19, 2021, Claimant filed an Affidavit confirming that the 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 August 23, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent did not participate in the expungement hearing.

The Customers did not participate in the expungement. 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 reviewed the settlement documentation related to Occurrence Number 1601020, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that a condition of the settlement was that Mr. and Mrs. P would not oppose any request for expungement of all references to their dispute from CRD. The Arbitrator further noted that Rule 2081 prohibits such conditional settlements; however, the settlement was dated March 12, 2013, prior to the effective date of Rule 2081 on July 30, 2014. The Arbitrator also noted that Claimant did not contribute to the settlement amount.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1626371, 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 contributed to the settlement amount. The Arbitrator also noted that expungement is still appropriate as Claimant contributed to the settlement to minimize the costs involved in defending himself and avoid litigation costs.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; Claimant's BrokerCheck® Report; the Customers' financial statements and disclosure agreements; the settlement agreements; and extensive evidence of personal service on Respondent and the Customers.

### **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 1601020 and 1626371 from registration records maintained by the CRD for Claimant Robin Tom Naylor (CRD Number 1392433) with the understanding that, pursuant to Notice to Members 04-16, Claimant Robin Tom Naylor 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 claim, allegation, or information is false.

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

Claimant is a resident of Kent, Washington. He has been a financial services professional since August of 1984. Respondent is a previously registered securities broker-dealer that is not currently registered with FINRA. Between February of 1998 and December of 2011, Claimant was a registered representative with Respondent in Covington, Washington and Kent, Washington.

Claimant seeks to have two customer disputes expunged from Claimant's CRD records. Both arise out of complaints filed in 2012 by the Customers seeking recovery for losses sustained on their Tenant in Common Real Estate Investments ("TICs") during the unprecedented and unforeseeable financial crisis of 2008.

#### **Occurrence Number 1601020**

On January 30, 2012, Mr. and Mrs. P filed FINRA Arbitration Case #11-04781 against Claimant, Respondent, and three others, alleging "breach of fiduciary duty, misrepresentation, negligence, violations of Washington securities act and the Consumer Protection Act when investments were purchased in June 2008". Mr. and Mrs. P sought compensatory damages. On March 20, 2013, as a business decision, Respondent settled with Mr. and Mrs. P. Claimant had neither input into the settlement, nor did he contribute to the settlement sum.

#### **Occurrence Number 1626371**

On August 24, 2012, Mr. and Mrs. W filed FINRA arbitration Case #12-02917 against Claimant, Respondent, and eight others, alleging "breach of contract, negligence, misrepresentation, fraud and elder abuse in the tenant in common transactions purchased in 2008". On August 14, 2014, on advice of counsel and after consideration of the costs and risks of proceeding to hearing, Claimant settled with Mr. and Mrs. W.

#### **Findings**

The oral testimony and documentary evidence clearly establish:

- a. The Customers were experienced investors in real estate and IRC Section 1031 exchanges;
- b. They were accredited investors;
- c. Their investment objectives were growth, income, and tax advantage;
- d. They had an overall moderate risk tolerance but expressed a high-risk tolerance for TICs;
- e. Their investment time horizons were more than ten years;
- f. They had an aversion to liquid investments such as stocks and bonds and preferred real estate but did not want to engage in active management;
- g. They wanted the tax advantages, i.e., deferred capital gain taxes, offered by TICs;
- h. Claimant thoroughly instructed the Customers in person and in writing of the terms, risks, costs, fees, advantages, and disadvantages of TIC investments.
- i. The Customers completed and signed subscription and disclosure documents, and they received and reviewed the Private Placement Memoranda ("PPMs") associated

with the subject TICs. Thus, they affirmed their understanding in multiple documents, including direct participation program disclosure forms and TIC acknowledgement forms. They signed the forms, thereby attesting that: they had received, read and understood the PPMs related to the TICs; met the suitability; understood that the TICs were illiquid investments; discussed liquid investments with their representative; could lose some or all of their investment; read the risk section of the prospectus; understood that the TICs were not guaranteed investments; were sophisticated investors who were able to evaluate the risks and rewards of TIC investments; had a high net worth; understood that the TICs were speculative investments that involved a high degree of risk; and could be required to pay additional, out-of-pocket expenses, should the property perform poorly.

### **Conclusions**

Claimant did not breach any fiduciary duties to the Customers because the transactions at issue were performed under a suitability standard, not a fiduciary standard and, as such, Claimant owed no specific fiduciary duty the Customers. More importantly, Claimant at all times acted in the Customers' best interests consistent with their risk tolerances, in furtherance of their investment objectives, without conflicts of interest, and with full disclosure of the risks and benefits of TICs and his compensation and fees.

The allegations of violations of the Washington Securities Act and the Consumer Protection Act are false and clearly erroneous because the determination of the validity of such violations can only be made by the entities that set such regulations and, in the absence of a finding regarding the allegations by said entities, the allegations at issue remain unfounded, unsupported, and false.

The Customers failed to identify any conduct supporting their claims of breach of contract, negligence, and fraud. The allegation of negligence is not supported by the facts and law. No evidence has been produced indicating that Claimant breached any duty owed, nor has any evidence been produced to indicate that Claimant allowed his conduct to fall below the applicable standard of care.

The allegations of fraud and misrepresentation are false because Claimant fully explained the details of all the TICs to the Customers. Additionally, the Customers were provided with written materials pertaining to the investments. The Customers acknowledged their understanding of the details and authorized the investments.

Both disputes appear to have arisen out of dissatisfaction with the decline in value of the TICs which were caused by the effects of the financial crisis at that time, an event which Claimant could not have predicted or foreseen. The Customers were sophisticated investors who performed much of their own research regarding their TIC investments.

For the reasons set forth above, the public disclosure of the false and clearly erroneous allegations does not offer any public protection and has no regulatory value. If not expunged, the record of these customer disputes will mislead any person viewing Claimant's CRD record and will not provide valuable information for knowledgeable decision making.

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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#### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

August 13, 2021, postponement requested by Claimant	= \$	50.00
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Total Postponement Fees	= \$	50.00
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The Arbitrator has assessed the total postponement fees to Claimant.

#### **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 Pre-Hearing Conference: January 8, 2021	1 session	= \$	50.00
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Two (2) hearing sessions on expungement request @ \$50.00/session Hearing: August 23, 2021	2 sessions	= \$	100.00
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Total Hearing Session Fees	= \$	150.00
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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**

Craig Charles Beles

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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**

***Craig Charles Beles***

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Craig Charles Beles  
Sole Public Arbitrator

**09/08/2021**

\_\_\_\_\_  
Signature Date

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September 08, 2021

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