Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Donna Prisciantelli DeSanctis

Case Number: 20-02820

vs.

Respondent
Voya Financial Advisors, Inc.

Hearing Site: Boca Raton, Florida

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Donna Prisciantelli DeSanctis: Gregg J. Breitbart, Esq. and Kevin Tragesser, Esq., Kaufman Dolowich & Voluck, LLP, Fort Lauderdale, Florida.

For Respondent Voya Financial Advisors, Inc. ("Voya"): Zachary S. Knoblock, Esq., Winget, Spadafora & Schwartzberg, LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 27, 2020.
Donna Prisciantellia DeSanctis signed the Submission Agreement: August 27, 2020.

Statement of Answer filed by Respondent on or about: October 19, 2020.
Voya signed the Submission Agreement: November 19, 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 Numbers 1809878, 1809881 and 1868198, collectively referred to as (the "Occurrences"), and compensatory damages in the amount of $1.00 from Respondent.

In the Statement of Answer, Respondent requested the denial of Claimant's 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 January 8, 2021, Claimant advised that the customers in the Occurrences (the "Customers" "A" and "B") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On January 17, 2021, the Customers filed an opposition to Claimant's request for expungement and stated as follows: "Mr. Breitbart has invited a response from us, [the Customers], to Ms. DeSanctis's Statement of Claim. We do appreciate the opportunity to explain why we do not support the expungement in FINRA Case No. 20-02820 from Ms. DeSanctis's permanent industry record. Please know that our Aunt, […], entrusted her estate to us and we never took that gift for granted. We were extremely close with our Aunt and were quite aware of her how hard she worked to accrue a sizable savings. Our Aunt requested that we use Ms. DeSanctis, a person she considered a friend and advisor, as a financial advisor. Respecting our Aunt's wishes, Ms. DeSanctis became our financial advisor upon [our Aunt]'s passing in 2008. Unfortunately, our trust in Ms. DeSanctis ended because of her falsifying documents to enable us to be eligible for a higher risk investment and assuring us that our initial investment was secure and could not be lost. The following summarizes why we contest the expungement:***Ms. DeSanctis told us our Aunt was invested in LEAF Investment. This was false. We learned later [our Aunt] invested in CNL. ***Ms. DeSanctis repeatedly reassured us that our original investment in LEAF 4 could never be lost. However, if we did not make any money, we could not recoup our investment for nine years. Neither of us would squander our Aunt's hard earned money if we thought it could all be lost. ***Ms. DeSanctis falsified the eligibility documents for us to invest in LEAF 4. Handwriting on documents sent to [the Customers] are identical because both documents were filled in by Ms. DeSanctis. The documents were overnighted to [Customer A], in Ohio, and [Customer B], in Georgia, to be signed and overnighted back to Ms. DeSanctis. The documents were signed by [the Customers], however, they questioned the inaccuracy of the investment experience and the net worth. Ms. DeSanctis said it was necessary to qualify to invest in this high risk LEAF. Please note: In 2009, [Customer A] had no real estate or other investments. She and her husband supported his small business. Ms. DeSanctis wrote [Customer A] had 10 years investment experience. In 2009, [Customer B] had a small savings in a Delta Credit Union and her husband's 401k. According to Ms. DeSanctis, she had 15 years investment experience. Neither [of the Customers] had "sufficient acumen" to evaluate this high risk investment. Net worth of $1,000,000-2,999,999 was checked off by Ms. DeSanctis instead of $75,000-99,999, which was a more accurate net worth for each. Neither [of the Customers] had ever heard the term "reit" nor did Ms. DeSanctis use this term.***As LEAF dividends dwindled, [the Customers] initiated many calls with Ms. DeSanctis to express concern. She always reassured that

regardless, the initial investment would not be lost. In February 2015, [the Customers] requested Ms. DeSanctis arrange a conference call with a LEAF representative. During this call, we were told that LEAF was in the process of making final distributions to its investors and our money was gone. Ms. DeSanctis reacted with surprise and said she would get in touch with a lawyer friend about a class action suit. She later notified us that her friend did not take class action cases. This was the last communication Ms. DeSanctis had with [the Customers] even though she was still their financial advisor because they both had an annuity set up by her. Ms. DeSanctis never called either of [the Customers] to talk about what happened with LEAF 4. In short, the claims by [the Customers] are neither "clearly erroneous" nor "false". Ms. DeSanctis misrepresented LEAF 4, either knowingly or unknowingly, to novice investors. Our families, our trust, and our failure to do right by our Aunt have been impacted by the events in this trial. We absolutely do not support expunging Ms. DeSanctis's record. We would be amenable to a conference call regarding the expungement trial. We appreciate your time and consideration."

On January 22, 2021, the Customers advised FINRA Staff of the following: "I am writing in response to your email concerning the 20-02820 Video Expungement-Donna Prisciantelli DeSanctis vs. Voya Financial Advisors, Inc. Since neither my sister, [Customer B] nor I ,[Customer A], will be available on February 3, 2021, we would like our very detailed email sent on January 17, 2021 to [FINRA Staff] and forwarded to you on January 19, 2021 at 9:47 a.m., to stand as our position on this case. We contest this expungement based on the actual evidence presented at our arbitration in March of 2017. We maintain that Ms. DeSanctis neglected her fiduciary obligations as our financial advisor which resulted in a complete loss of investment in a high risk venture for which neither one of us was qualified. [Customer B] and I hereby contest the expungement relief for Ms. DeSanctis (FINRA Case No. 20-02820). Thank you for your consideration, [Customer A]."

On January 22, 2021, FINRA staff informed the Customers of their right to seek rescheduling of the February 3, 2021, expungement hearing. The Customers did not request the rescheduling of the hearing.

The Arbitrator conducted a recorded hearing by videoconference on February 3, 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 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 related to the Occurrences, 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: correspondence; account forms; disclosure forms; January 17, 2021, email from the Customers; and, the Statement of Claim and Statement of Answer in the underlying case.

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. Claimant's claim for $1.00 in compensatory damages is denied.

2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 1809878, 1809881 and 1868198 from registration records maintained by the CRD for Claimant Donna Prisciantelli DeSanctis (CRD Number 2138803) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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; and,

   The claim, allegation, or information is false.

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

   The credible and unrebutted testimony, corroborated by the documentary evidence, established that the claims and allegations are false and clearly erroneous. While the Customers claimed they were not informed of the risks of the subject investment, the documents showed that they acknowledged they could lose their entire investment, and that the investment was illiquid. More than once. Included in this evidence was a handwritten letter from Customer A referring to having talked about the investment money and needs of the Customers' family and thanking Claimant for her "time and sharing [her] expertise with" the Customers. This letter informed Claimant of the Customers' decision to go forward with a purchase of the subject investment. This is consistent with Claimant's testimony, describing fulsome communications with the Customers about the risks and features of the subject investment.

   The Arbitrator did consider the settlement agreement between the Customers and the Claimant's former employer. The amount of the settlement is roughly 30% of the minimum claimed damages. (The claim was for damages "reasonably believed to be in excess of" a specific amount.) The settlement amount was more than trivial and more than the Arbitrator would consider "nuisance value." Whether the amount is high as a substitute for anticipated additional costs of defense is a matter of opinion. Nevertheless, considering the other

evidence and considering that Claimant did not participate in or contribute to the settlement, the settlement does not persuade the Arbitrator that the dispute information has value to the investing public.

While the Customers did submit a statement opposing expungement, they did not attend the final hearing to present live testimony and answer questions from Claimant. Many of the assertions made in the statement of the Customers were demonstrated to be inaccurate by the documentary evidence or by the combination of documentary evidence with Claimant's credible testimony.

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

*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 Voya 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 a single Arbitrator @ $50.00/session =$ 50.00
Pre-Hearing Conference: December 17, 2020 1 session

One (1) hearing session on expungement request @ $50.00/session =$ 50.00
Hearing: February 3, 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

Will Murphy - 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

Will Murphy **02/05/2021**

Will Murphy
Sole Public Arbitrator

Signature Date

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February 05, 2021
Date of Service (For FINRA Dispute Resolution Services use only)