

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joseph A. Quartucci

Case Number: 20-02926

vs.

Respondent
National Planning Corporation

Hearing Site: Houston, Texas

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 Joseph A. Quartucci (“Claimant”): Erika Binnix, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent National Planning Corporation (“Respondent”): Eric A. Michaels, Esq. and Piotr Krypciak, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: September 2, 2020.
Amended Statement of Claim filed on or about: February 16, 2021.
Second Amended Statement of Claim filed on or about: March 8, 2021.
Claimant signed the Submission Agreement: September 1, 2020.

Statement of Answer filed on or about: September 29, 2020.
Respondent signed the Submission Agreement: September 28, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested expungement of Occurrence Number 1930773, 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 opposed Claimant's request for monetary relief and requested that all fees and costs be assessed to Claimant.

At the hearing, Claimant withdrew the 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 February 16, 2021, Claimant filed a Motion to Amend Statement of Claim ("Motion to Amend"), to which no response was filed. In an Order dated March 1, 2021, the Arbitrator granted the Motion to Amend.

On March 8, 2021, Claimant filed a second Motion to Amend Statement of Claim ("Second Motion to Amend"), to which no response was filed. In an Order dated March 19, 2021, the Arbitrator granted the Second Motion to Amend.

On March 11, 2021, Claimant advised that the customer in Occurrence Number 1930773 ("Customer") was served with the Second Amended Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On March 15, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

The Arbitrator conducted a recorded, telephonic hearing on April 23, 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, took no position on 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 1930773 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's testimony; account documentation, including disclosure forms signed by the Customer; 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 1930773 from registration records maintained by the CRD for Claimant Joseph A. Quartucci (CRD Number 4522516) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joseph A. Quartucci 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 evidence demonstrated that the Customer and her spouse contacted Claimant in the fall of 2016. Both of them had investment experience, and the Customer provided tax preparation services, which suggests some level of financial sophistication. The Customer indicated that she and her spouse wanted to retire in about 20 years, they had savings they wanted to preserve, and they wanted to increase their money in a safe way. Based on the information they provided, Claimant presented a number of investment options for their consideration. All of these options were suitable and in accordance with their investor profile and investment goals. After Claimant explained the details of each option, including any associated risks, benefits, and fees, the Customer and her spouse chose a variable annuity ("Annuity") because it offered the benefit of growth from the stock market and also provided safety, in the form of guaranteed minimum income. The Customer was provided with written materials concerning the Annuity and signed an acknowledgement confirming that it had been fully explained and she understood its benefits, risks, and fee structure. The Customer consulted another financial advisor, in or about March 2017, (shortly after choosing the Annuity) and then lodged a complaint with Respondent. The Customer had not indicated any dissatisfaction with the Annuity when she and Claimant met or spoke prior to March 2017. Claimant testified that the complaint was filled with false information and he suspects, based on the wording, that it was drafted by the other financial advisor. Claimant provided a detailed, written response to the complaint. After investigating the complaint, Respondent denied it. The Customer did not pursue the matter.

Based on the evidence described above, the Customer and her spouse chose the Annuity because it was the investment that best matched their profile and goals and Claimant performed his duties in a thorough, ethical, and professional manner.

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 @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: December 21, 2020	1 session	

One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: April 23, 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

Lynne M. Gomez

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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

Lynne M. Gomez

Lynne M. Gomez
Sole Public Arbitrator

05/06/2021

Signature Date

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May 06, 2021

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