

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Lee Rawiszer
Paul Volpe

Case Number: 20-02949

vs.

Respondent

Kestra Investment Services, LLC

Hearing Site: New York, New York

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 Persons vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Lee Rawiszer, and Paul Volpe: Richard A. D'Amura, Esq., D'Amura & Zaidman, PLLC, Austin, Texas.

For Respondent Kestra Investment Services, LLC: Shawn Shook, Esq., Kestra Investment Services, LLC, Austin, Texas.

CASE INFORMATION

Statement of Claim filed on or about: September 2, 2020.

Lee Rawiszer signed the Submission Agreement: September 2, 2020.

Paul Volpe signed the Submission Agreement: September 2, 2020.

Statement of Answer filed by Respondent on or about: October 19, 2020.

Kestra Investment Services, LLC signed the Submission Agreement: October 19, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants 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 Claimants' expungement request made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: expungement of Occurrence Numbers 1891652 and 1891715 and compensatory damages in the amount of \$2.00 from Respondent.

In the Statement of Answer, Respondent requested that the Panel award no damages and assess all forum fees to the Claimants.

At the hearing, Claimants withdrew the request for damages.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On January 27, 2021 and February 18, 2021, Claimants advised that the customers in Occurrence Numbers 1891652 and 1891715 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on March 22, 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 customers in Occurrence Numbers 1891652 and 1891715 did not participate in the expungement hearing. The Arbitrator found that the customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimants' 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 noted that the disputes related to Occurrence Numbers 1891652 and 1891715 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimants' testimonies; Claimants' BrokerCheck® Reports; and exhibits.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, 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 1891652 from registration records maintained by the CRD for Claimant Paul Volpe (CRD Number 2575508) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Volpe must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Arbitrator recommends the expungement of all references to Occurrence Number 1891715 from registration records maintained by the CRD for Claimant Lee Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Rawiszer 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:

Claimants, Lee Rawiszer (“Rawiszer”) and Paul Volpe (“Volpe”) were financial advisors and partners in Paradigm Financial Partners (“Paradigm”), in 2015 and 2016. For several years prior to 2015 and up until the present time, they have provided financial and wealth management services through the firm. Paradigm worked closely with Respondent Kestra Investment Services, LLC (formerly known as NFP Partners), which served as Paradigm’s broker dealer in 2015 and 2016.

In 2015, Claimants Rawiszer and Volpe together worked on a financial and wealth management plan for a married couple (“customers”). In addition to other assets, the customers were looking to invest and manage the assets from a recent sale to provide income for retirement. In total, the customers had nearly \$11 million available to invest. After several in-person meetings and multiple phone calls and other correspondence, the customers and Claimants agreed upon a financial strategy, which included certain investments, and customers executed documents. After a meeting on October 15, 2015, the customers initiated the transfer of cash and assets to the firm’s money manager. However, on October 20, 2015, the customers notified Claimants that they did not wish to work with Paradigm with the proposed strategy that they had previously agreed upon and they requested no further changes to their existing cash and investment portfolio. Claimants were able to return all investments and cash, except for \$165,000.00 which had already been invested in a Real Estate Income Trust (“REIT”). The customers had written a separate check for investment in Inland Real Estate Income Trust on October 7, 2015 and the check had already been cashed by the REIT.

On or about June 6, 2016, the customers filed a complaint with the Securities and Exchange Commission (“SEC”) alleging that Claimants failed to advise them the commission paid by the REIT would decrease the value of their investment. The customers alleged that they intended to redeem their investment after the one year anniversary of their investment (“the one year tie up” or required holding period) and had been advised that the commissions would be deducted from the total amount redeemed. On or about June 27, 2016, the complaint was sent to the Respondent’s attention. Respondent responded to the customers and Claimants responded to the SEC. Both written responses denied that the customers were not advised of the commissions. No further action was taken by either the SEC or the customers.

The records show that the Claimants discussed the prospectus of the Inland REIT with the customers in person several weeks before October 7, 2015. According to both Claimants, the Inland Prospectus, the illiquidity of the investment, the commission fee structure and the risk associated with the Inland REIT were discussed in person with the customers. The Claimants both credibly testified that the customers were experienced investors and their holdings included a pre-existing illiquid investment. They also stated that the customers participated in the discussion and asked questions concerning the proposed investment. The Claimants were eventually removed as the financial advisors/brokers associated with the REIT, but until that time, Claimants were aware that the customers actually received income from the REIT.

Moreover, the evidence shows that the customers had acknowledged receipt of the Inland prospectus at least five business days in advance of signing the subscription agreement on the agreement itself. The Inland Prospectus set forth its commission fee structure in several places, including, but not limited to pages 1, 93-102.

Based upon the evidence, the Arbitrator finds that the customers were duly advised of the commission fee structure and that they were aware that the commissions would be deducted from the investment. There is no basis for their claim that they were not advised of commissions would be deducted from their redeemed investment. Accordingly, the allegation claim, allegation or information is false and/or factually impossible or clearly erroneous. The record supports expungement of the customers information.

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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Kestra Investment Services, 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 a single Arbitrator @ \$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: March 22, 2021 1 session

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed the total hearing session fees jointly and severally to Claimants.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATOR

Lynne M. Reid-McQueen

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Lynne M. Reid-McQueen

Lynne M. Reid-McQueen
Sole Public Arbitrator

04/09/2021

Signature Date

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April 09, 2021

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