Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Joshua Eugene Stroud

vs.

Respondents
Berthel Fisher & Co. Financial Services, Inc.
LPL Financial LLC

Case Number: 20-03028

Hearing Site: Portland, Oregon

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. Members

REPRESENTATION OF PARTIES

For Claimant Joshua Eugene Stroud ("Claimant"): Zachary Morse, Esq. and Dochtor Kennedy, MBA, J.D., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Berthel Fisher & Co. Financial Services, Inc. ("Berthel Fisher"): Shelley Davenport, Esq., Berthel Fisher & Co. Financial Services, Inc., Cedar Rapids, Iowa.

For Respondent LPL Financial LLC ("LPL Financial"): Sara B. Davis, Esq., LPL Financial LLC, Boston, Massachusetts.

Hereinafter, Berthel Fisher and LPL Financial are collectively referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: September 4, 2020.
Claimant signed the Submission Agreement: February 1, 2021.

Statement of Answer filed by Berthel Fisher on or about: October 29, 2020.
Berthel Fisher signed the Submission Agreement: October 29, 2020.

Statement of Answer filed by LPL Financial on or about: November 10, 2020.
LPL Financial signed the Submission Agreement: November 16, 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 their respective Statements of Answer, Respondents did not oppose Claimant's expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 1772235, 1772236, 1827082, 1870719, and 1896870 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 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 Respondents; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In their respective Statements of Answer, Respondents requested compensatory damages in the amount of $1.00 be denied.

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 February 10, 2021, Claimant advised that the customers in Occurrence Numbers 1772235 ("Ms. F"), 1772236 ("Mr. H"), 1827082 ("Ms. M"), 1870719 ("Mr. DC"), and 1896870 ("Mr. and Mrs. C") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Ms. F, Mr. H, Ms. M, Mr. DC, Mr. C, and Mrs. C are collectively referred to as "Customers".

On February 15, 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 26, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Berthel Fisher did not participate in the expungement hearing.

LPL Financial participated in the expungement hearing, and as stated in the Statement of Answer, did not oppose Claimant's expungement request.

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 occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1870719 and 1896870, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

The Arbitrator noted that the disputes related to Occurrence Numbers 1772235, 1772236, and 1827082 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 Statement of Claim; the Statement of Answers by Respondents; Claimant's BrokerCheck® Report; and Claimant's exhibits.

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 Numbers 1772235, 1772236, 1827082, 1870719, and 1896870 from registration records maintained by the CRD for Claimant Joshua Eugene Stroud (CRD Number 4448453) with the understanding that, pursuant to Notice to Members 04-16, Claimant Joshua Eugene Stroud 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:

   Four (4) of the occurrences are uniquely inter-related. Claimant testified that while he was out of the office for a period of several weeks, Mr. H contacted him by phone to complain

that a significant sum was missing from his annuity accounts. Mr. H was assured that Claimant would address the issue immediately upon his return. However, Claimant testified that prior to his return, Mr. H contacted the underlying complainants, Mr. DC, Ms. F, and Mr. M, and an un-identified attorney, and together initiated 4 of the underlying complaints. The Arbitrator recognized that this is hearsay. However, he finds the hearsay discussed above to be credible, as it is corroborated by (i) the remarkable coincidence of near simultaneous filings of the 3 occurrences that were abandoned without arbitration or litigation; (ii) the substantially identical nature of the asserted claims and a paucity of supporting facts for any of them; (iii) the similar legalistic syntax employed; and (iv) the pre-existing relationships between these underlying complainants aside from their customer/broker relationships with Claimant.

Claimant testified that Mr. and Mrs. C were personal friends of his and that they are members of the same church and continue to this day to see each other. Mr. and Mrs. C related to Claimant that they were contacted by an attorney claiming to represent a group of investors concerning irregularities in their respective brokerage accounts with Claimant and solicited participation. Claimant also testified that Mr. C had requested on multiple occasions that Claimant act as his investment advisor. Claimant declined to do so. Here again is hearsay but is credible in context.

Occurrence Number 1772235

Ms. F became a client of Claimant shortly after the death of her husband, who had been a long-standing work and social friend of Mr. H, and a long-term client of Claimant. She did not respond to the notice of the expungement request and did not appear or file any statement with regard to the expungement sought.

The gist of Ms. F's complaint is unsuitability in several particulars, i.e., the initial cost and the nature of the REIT investments. There is paucity of facts to support the naked allegation of unsuitability. On the other hand, a review of the purchase documents indicates and substantiates suitability given Ms. F's investor profile, investment goals, risk tolerance, desire for a stream of income, net worth, and investor experience.

Additionally, the fact that the claim was abandoned is probative of its lack of merit. Accordingly, the Arbitrator finds the underlying claim to be false and that this occurrence report does not provide the investing public or any prospective employer with useful information upon which to predicate investment or employment decisions.

Occurrence Number 1772236

Mr. H became a customer of Claimant in 2008 when contemplating retirement. He opened 4 accounts, 2 annuities, an IRA, and a brokerage account. Mr. H did not respond to the notice of the expungement request and did not appear or file any statement.

This cascade of events was initiated when Mr. H asserted there were funds missing from one of his annuity accounts. But, upon a review of the pertinent account *with* Mr. H, it became clear that during Mr. H's divorce, the "missing funds" had been withdrawn and/or transferred to his wife at Mr. H's direction. The Arbitrator therefore finds the allegation of misappropriation of funds to be false.

Mr. H also asserted he was placed in unsuitable alternative securities, i.e., REITs and annuities. He provided no specification as to any facts indicating unsuitability. Based upon the testimony of Claimant as to the post purchase performance of these securities as against Mr. H's pre-purchase goals and a review of the pre-purchase documents, the Arbitrator finds no evidence of unsuitability, and abundant indicators that at the time of the purchase the securities in question were suitable given Mr. H's risk tolerance, investment goals, net worth, and investor experience. The broker-dealer Respondents conducted investigations and concluded the claim had no merit.

Additionally, the fact that the claim was abandoned is probative of a lack of merit. Accordingly, the Arbitrator finds the underlying claim to be false and that this occurrence report does not provide the investing public or any prospective employer with useful information upon which to predicate investment or employment decisions.

Occurrence Number 1827082

Mr. M, another work friend referred to Claimant by Mr. H, purchased a JNL variable annuity from Claimant in 2015. He did not respond to the notice of the expungement request and did not appear or file any statement with regard to the expungement sought.

Some months post-purchase, another broker (employed at his bank), apparently advised Mr. M that the JNL annuity was inferior to an unidentified variable annuity that the bank's broker was offering and therefore "unsuitable." Mr. M also claimed that he never received his annuity contract and that he wanted to take advantage of the 6-month "free look" and cancellation provision. Unfortunately, the 6-month period had elapsed and JNL denied Mr. M had a right to cancel the annuity without penalty.

Claimant had no role in the failure of Mr. M to take advantage of the "free look" provision with the 6-month period after inception as specified in the contract. The Arbitrator finds this portion of the claim to be impossible or clear error.

As to the claim of unsuitability, there is paucity of facts to support the naked allegation of unsuitability, especially when put forth by a broker attempting to sell a competitive product. It is at best a mere opinion in the nature of sales puffery. On the other hand, a review of the purchase documents indicates suitability given Mr. M's investor profile, investment goals, risk tolerance, desire for a stream of income, net worth, and investor experience. Additionally, the fact that the claim was abandoned is probative of its lack of merit.

Occurrence Number 1870719

This occurrence arose from a FINRA arbitration wherein Mr. DC alleged the unsuitability of REIT investments he made in 2014 through Claimant. Despite actual notice, neither Mr. DC, nor his attorney in the arbitration case, responded to the request for expungement, appeared or filed any statement with regard to the expungement sought.

Mr. DC was referred to Claimant in 2014 by his son, a client of Claimant. He was seeking investments similar to that of his son's REIT portfolio which produced a regular stream of income.

Mr. DC initially proposed to invest $200,000 in REITs, but Claimant persuaded him to limit his REIT investment to $100,000 until he became comfortable; and to put the additional $100,000 into a managed equities account. Mr. DC was 88 when he made these investments. However, there is nothing to suggest he was of unsound mind or otherwise judgmentally impaired. Throughout the investment process, he was advised and accompanied by his son and daughter-in-law, both of whom were and are, like Mr. DC, experienced qualified investors.

At the time of the purchase of the REITs, Mr. DC represented that he had a net worth of $2.5 million and liquid assets of $450,000; that his primary investment goal was growth and income; and that his assets were 18% stocks, 9% bonds, 10% cash, 20% commodities, and 40% real estate; and his investment time horizon was long (10+ years).

In addition, Mr. DC acknowledged as to each REIT that he knew it was not liquid. As to his assertion of unsuitability due to concentration in alternative securities, these securities constituted only about 4% of his net worth; and he expressly represented that the non-liquidity of these investments would not be a problem for him. Mr. DC's claim simply ignores the multiple warnings of non-liquidity and his own written representations that non-liquidity of the REITs was of no concern to him. It appears that by this claim, Mr. DC sought to convert Claimant and the broker dealer into guarantors of the idealized return he sought.

This matter was settled for a relatively small amount compared to the claim. Claimant did not contribute to the settlement and Claimant had no knowledge of the settlement negotiations until they were concluded. Given these facts, it appears the settlement was in the nature of a "cost-of-defense" business decision by Berthel Fisher.

The Arbitrator finds no evidence of unsuitability or excessive concentration in alternative securities. The portfolio was structured in securities of the generic type specifically requested by an experienced "qualified investor." The Arbitrator further finds the occurrence report to have been accurate and appropriate when made, but that it has been rendered inaccurate, even misleading, by subsequent unreported events.

Occurrence Number 1896870

Mr. and Mrs. C were putative friends of Claimant. He testified that Mr. C was recruited contemporaneously with the other occurrences for which expungement is sought via an unsolicited cold call from an unidentified attorney. Neither Mr. C, Mrs. C, nor their attorney, responded to the notice of the expungement request, and neither appeared nor filed any statement with regard to the expungement sought.

Mr. and Mrs. C are a relatively young couple with dual income, a net worth of $1.2 million, over $400,000 in liquid assets, a long investment horizon, and an aggressive risk tolerance, seeking growth, trading and speculation.

Mr. and Mrs. C purchased REIT investments between 2007 and 2015. They signed REIT applications and alternative investment disclosures and confirmed REIT suitability, on multiple occasions. There is simply no evidence of misrepresentation or non-suitability of the REITs, especially given the education investor experience, investment goals, and net worth of these investors.

This matter was settled for approximately 7.5% of the initial prayer. Claimant did not contribute to the settlement and Claimant had no knowledge of the settlement negotiations until they were concluded. Given these facts, it appears the settlement was in the nature of a "cost-of-defense" business decision by Berthel Fisher.

Conclusion

Mr. H, likely in a pique of anger or frustration, forgot he withdrew or transferred substantial funds from his annuity account to his ex-wife in connection with their divorce. Instead he mistakenly blamed Claimant for the alleged shortfall in his account and knowingly unleashed a cascade of claims against Claimant and the broker dealers. Upon examination, all of the claims proved to be without merit.

The initial reports of these 5 claims on Claimant's CRD BrokerCheck® Report were appropriate and accurate when made. But given the lack of merit of the claims individually and collectively, their continuation on the CRD BrokerCheck® Report for Claimant gives the reader a patently negative and decidedly false impression of Claimant's integrity as a financial advisor.

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

**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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents are each assessed the following:

Member Surcharge	=$	150.00

Late Pre-Hearing Cancellation Fees
Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

January 12, 2021, cancellation requested by Claimant	=$	100.00
Total Late Pre-Hearing Cancellation Fees	=$	100.00

The Arbitrator has assessed the total late pre-hearing cancellation 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 @ $50.00/session			=$	50.00
Pre-Hearing Conference:	January 18, 2021	1 session		
Three (3) hearing sessions on expungement request @ $50.00/session			=$	150.00
Hearings:	August 10, 2021	1 session		
	August 26, 2021	2 sessions		
Total Hearing Session Fees			=$	200.00

The Arbitrator has assessed $150.00 of the hearing session fees to Claimant.

The Arbitrator has waived $50.00 of hearing session fee.

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

ARBITRATOR

Daniel B. MacLeod - 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

Daniel B. MacLeod **09/08/2021**

Daniel B. MacLeod
Sole Public Arbitrator

Signature Date

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.

September 08, 2021
Date of Service (For FINRA Dispute Resolution Services use only)