

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Jayne Marie P. Sullivan

Case Number: 20-03130

vs.

Respondent
National Planning Corporation

Hearing Site: Los Angeles, California

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 Jayne Marie P. Sullivan (“Claimant”): Zachary Morse, Esq., HLBS Law, Westminster, Colorado.

For Respondent National Planning Corporation (“Respondent”): Eric A. Michaels, Esq., Saretsky, Hart, Michaels & Gould, Birmingham, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: September 10, 2020.
Claimant signed the Submission Agreement: September 10, 2020.

Statement of Answer filed by Respondent on or about: October 12, 2020.
Respondent signed the Submission Agreement: October 12, 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 took no position on Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1558530 from her CRD records pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Number 1558530 from her CRD records pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
3. Deletion of all Disclosure Reporting Pages accompanying Occurrence Number 1558530;
4. Compensatory damages in the amount of \$1.00 from Respondent; and
5. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested:

1. Compensatory damages in the amount of \$1.00 be denied; and
2. All costs and fees associated with the proceeding be assessed against Claimant.

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 June 30, 2021, Claimant advised that the customer in Occurrence Number 1558530 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On July 6, 2021, Claimant filed an Affidavit confirming that the Customer was 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 5, 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 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 also reviewed the settlement documentation related to Occurrence Number 1558530, 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. The Arbitrator noted that Respondent settled with the Customer without consulting Claimant and that Claimant's contribution to the settlement amount was made at the direction of Respondent. The Arbitrator recommends expungement of this occurrence as the settlement was

a business decision made by Respondent and was a nominal amount compared to the potential cost of arbitration or litigation.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim; the Statement of Answer; Claimant's Submission Agreement; Respondent's Submission Agreement; Claimant's Affidavit of service on the Customer; Claimant's BrokerCheck® Report; Claimant's exhibits; the settlement agreement; and Claimant's testimony.

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 1558530 from registration records maintained by the CRD for Claimant Jayne Marie P. Sullivan (CRD Number 2539896) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jayne Marie P. Sullivan 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 finding of fact:

The claim, allegation, or information is false.

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

Claimant explained to the Customer in detail the terms, risks, costs, fees, features, and benefits of the Allianz Annuity. The Customer received and reviewed the prospectus associated with the Allianz Annuity. Claimant explained that the Allianz Annuity had significantly lower fees than the ING Annuity. Claimant explained the Allianz Annuity's guaranteed account value rider, which was a principal protection benefit. The principal protection rider provided for the restoration, minus any withdrawals, of the Customer's initial investment in the policy's fifth year, regardless of losses due to market fluctuation, which addressed the Customer's expressed concern about exposure to market volatility.

On March 12, 2007, the Customer purchased the Allianz Annuity with the principal protection rider, which was funded through the liquidation of the ING Annuity. The Customer completed and signed disclosure documents, including Respondent's suitability form, wherein she affirmed her understanding of the terms, risks, costs, fees, features, and benefits of the Allianz Annuity. The Customer received copies of the signed documents.

As a result of the effects of the recession in 2008, the Allianz Annuity declined in value. The Customer complained of downturn in value and on August 14, 2008, Respondent reassigned the Customer to a new financial advisor. As of that time in 2008, the Customer was no longer a client of Claimant.

In 2008 and 2009, it was repeatedly explained to the Customer by her “new” financial advisor that the principal protection rider provided for the restoration, minus any withdrawals, of her initial investment in the policy’s fifth year, regardless of losses to due market fluctuation.

Despite that advice from her new financial advisors, the Customer repeatedly took withdrawals from the Allianz Annuity.

On January 21, 2011, the Customer alleged “unsuitability and misrepresentation of a variable annuity investment” and sought compensatory damages.

The Customer held the investment for approximately three and a half years (most of which was with a different advisor) and during that time had repeated contact with Claimant and the new advisor(s), and at no time made claims of unsuitability or misrepresentation. The Customer ignored the advice and information provided by the advisor(s) and continued to take withdrawals, thus negating the effects of the Customer’s principal protection rider.

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 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
------------------	------	--------

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 7, 2021	1 session		
One (1) hearing session on expungement request @ \$50.00/session		= \$	50.00
Hearing: August 5, 2021	1 session		
<hr/>			
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

Robert E. Jenks

-

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

Robert E. Jenks

Robert E. Jenks
Sole Public Arbitrator

08/19/2021

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.

August 19, 2021

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