

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Jason M. Lavigne

Case Number: 20-03143

vs.

Respondent  
Triad Advisors LLC

Hearing Site: Jersey City, New Jersey

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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 Jason M. Lavigne: Gregg J. Breitbart, Esq., Kaufman Dolowich & Voluck LLP, Fort Lauderdale, Florida.

For Respondent Triad Advisors LLC: Tyler Schubauer, Esq, Triad Advisors, LLC, Norcross, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: September 10, 2020.

Jason M. Lavigne signed the Submission Agreement: September 10, 2020.

Statement of Answer filed by Respondent on or about: September 24, 2020.

Triad Advisors LLC signed the Submission Agreement: September 24, 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 supported Claimant’s expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 2033813 and compensatory damages in the amount of \$1.00 from Respondent.

In the Statement of Answer, Respondent denied any liability to Claimant with regard to the demand for \$1.00 in damages and requested that all FINRA processing and forum fees 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 January 15, 2021, Claimant advised that the customers in Occurrence Number 2033813 were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On March 19, 2021, the customers in Occurrence Number 2033813 filed a declaration in support of Claimant's expungement request.

The Arbitrator conducted a recorded hearing by videoconference on April 12, 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 did not participate in the expungement hearing and did not oppose the request expungement. 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 occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 2033813, 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: the pleadings; Claimant's testimony; Claimant's BrokerCheck® Report; Settlement Agreement 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 2033813 from registration records maintained by the CRD for Claimant Jason M. Lavigne (CRD Number 4499856) with the understanding that, pursuant to Notice to Members 04-16, Claimant Jason M. Lavigne 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

In the Initial Statement of Claim filed by the customers it was alleged that the Claimant had failed to adequately advise the customers of the risks attendant to investing in the non-traded REIT. It was also alleged that Claimant's employer failed to properly supervise the Claimant. However, within a short period after filing the Statement of Claim, the customers filed an Amended Statement of Claim which removed the Claimant as a Respondent in their Claim. A footnote within the Amended Statement of Claim stated:

Claimant's case is focused [on] Respondent  
[Triad Advisors', LLC] due diligence. Claimants  
[Customers] do not allege any sales practices  
Violations on the part of [Claimant].

At the expungement hearing, the Claimant testified that his employer had already performed its due diligence regarding the non-traded REIT before the customers sought to invest in it. When the Claimant reviewed the characteristics of the REIT, he noted that the product involved marketing a real estate product to senior citizens. That market, he felt, was not cyclical and would be an investment suitable to his customers, especially since the customers wanted alternate investments which were not correlated to the stock market. His customers had also informed him that they were looking for current income and did not necessarily need access to their principal. Because the product was one which involved funds which were not liquid, Claimant testified that he made certain that he told his customers of the risks involved. The customers also informed him that they were seeking the higher return which this investment provided. In fact, at the hearing, the Claimant introduced several documents which indicated that the customers had at least

1-5 years' experience with the alternative investments as well as over five (5) years' experience with stocks, bonds and mutual funds. In another document, the customer advised that his knowledge in each of the above areas was good to extensive. With respect to both customers, the investment objective was income and the risk tolerance was moderate. Also on the alternate investment risk disclosure, both customers indicated that they had received the prospectus on the investment; that all risks had been explained by the Claimant; that they understood that the Claimant could not guarantee the liquidity of the investment; and that they acknowledged that the purchase of this investment did not constitute more than 2.2% of their total net worth.

One of the customers also was a Trustee of another individual Trust and informed the Claimant that the Grantor of the Trust also wished to invest in the non-traded REIT product. That customer, in her capacity as Trustee, completed another alternate investment risk disclosure, signed by both customer and the Grantor. Each made substantially the same acknowledgements as in the first risk disclosure only this time the Trust Funds used, which were from the Grantor's Trust, represented 5% of the Grantor's net worth. The Claimant, on several occasions, also personally spoke to the Grantor of the Trust who was advised that the alternative investment was not liquid and that it was necessary to hold the investment for a number of years before the principal could be liquid. An investment of \$100,000.00 was then made in the non-traded REIT.

At the expungement hearing, Claimant testified that the market for the REIT experienced several significant issues to the point that the disruptions caused a major decline in occupancy. After 2014, the Board responsible for distribution severely cut the percentage. Because information was difficult to obtain from a non-traded REIT, neither the Claimant nor the Claimant's employer was able to obtain any financial information from the governing body of the REIT.

However, well before the matter was scheduled for a FINRA hearing, the customers and the Claimant's employer agreed to settle the matter for a sum well below the customers' initial demand and, thereafter, both entered into a Settlement Agreement. The Arbitrator had an opportunity to review the Settlement Agreement which had been provided by Claimant's attorney. The Arbitrator heard testimony from the Claimant that he did not contribute any monies toward the amount of settlement and was never consulted by his employer as to any terms of the settlement.

While the Claimant provided proof of service regarding the notice to customer of the expungement hearing, and the customer did not appear, it is significant to note that the customer was conscientious in making certain that his view was brought before the Arbitrator through the submission of his Certification. In that certification he clearly stated that he first engaged the services of the Claimant in 2009 and he continues to keep him as his advisor to the present. In that Certification he also characterized the Claimant as:

...an honest, responsive and capable advisor.

The customer also stated in the certification the following:

It was never my intention to assert claims against [the Claimant herein], as I did not (and do not) believe that

he did anything wrong in connection with the recommendation of this investment....

And further:

...Because we never intended to assert any claims against [the Claimant], and do not believe that he did anything wrong in connection with this investment, I fully support [the Claimant's] efforts to remove any reference to the arbitration we filed from his personal industry record.

His testimony and documentations presented at the hearing, plainly demonstrate that the claim made against the Claimant was clearly erroneous pursuant FINRA Rule 2080(b)(1)(B). It was never the intention of the parties to file any claim against the Claimant because the customers were never dissatisfied with his sales practices. In fact, the Amended Statement of Claim was more about the Claimant's employer not performing its due diligence and did not reference anything done by the Claimant, i.e., Claimant was not really involved in the claim at issue. In fact, the customers early on recognized that the original Statement of Claim was clearly erroneous since the Claimant was not the individual who allegedly did not perform a proper due diligence. Clearly, the claim was meant to be directed toward the employer and not the Claimant. In the eyes of the customers, the Claimant did nothing wrong. The information upon which the BrokerCheck® Report was based was never intended to involve the Claimant and was clearly erroneous.

### **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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent Triad Advisors 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:



**ARBITRATOR**

Paul Allan Massaro

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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**

***Paul Allan Massaro***

Paul Allan Massaro  
Sole Public Arbitrator

**04/22/2021**

Signature Date

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April 23, 2021

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