

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

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In the Matter of the Arbitration Between:

Claimant  
Lee M. Goodin

Case Number: 20-03145

vs.

Respondent  
LPL Financial LLC

Hearing Site: Columbia, South Carolina

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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

**REPRESENTATION OF PARTIES**

For Claimant Lee M. Goodin: N. Nancy Ghabai, Esq., Ghabai Law Group LLC, Boston, Massachusetts.

For Respondent LPL Financial LLC: Thomas Barnett, Esq., LPL Financial LLC, Boston, Massachusetts.

**CASE INFORMATION**

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

Lee M. Goodin signed the Submission Agreement: September 10, 2020.

Statement of Answer filed by Respondent on or about: November 3, 2020.

LPL Financial LLC signed the Submission Agreement: November 2, 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 did not oppose Claimant’s expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: expungement of Occurrence Number 2045801; compensatory damages in the amount of \$1.00 from Respondent; and any and all other relief

that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not delineate a specific relief request.

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 12, 2021, Claimant filed a Certificate of Service confirming that the customer in Occurrence Number 2045801 ("Customer") was served, through her attorney, with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on March 25, 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, 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 2045801, 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 and argument: the credible oral testimony of Claimant; the Statement of Claim and Application for Expungement with Exhibits 1 through 12; Claimant's Pre-Hearing Exchange of Witness and Exhibit Lists and Memorandum; Respondent LPL Financial LLC's Statement of Answer and Non-Opposition to Request for Expungement; Certificate of Service with attached letter of February 12, 2021, to counsel for the underlying customer with additional proof of delivery to be provided in a post-hearing submission; and resubmitted Exhibit 6 (for clarity of the first page).

### **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 2045801 from registration records maintained by the CRD for Claimant Lee M. Goodin (CRD Number 6105653) with the understanding that, pursuant to Notice to Members 04-16, Claimant 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:

This matter concerns the expungement of Occurrence Number 2045801 for Financial Advisor Lee M. Goodin, CRD No. 6105653. The allegations are set out in the BrokerCheck® Report as: “Co-Trustee alleges an unsuitable sale of mutual funds generated unnecessary taxable gain for the trust. Activity period: 11/21/18 to 8/9/19” The claim was denied in the first instances by a well-reasoned reply of LPL Financial LLC (Exhibit 10). The matter was settled without Claimant’s consent or payment and without any admission of liability and as a “gesture of goodwill” for a portion of the amount in relief requested and not conceding liability involving the capital gains taxes of \$8,450.00 allegedly caused by Claimant’s actions (See Exhibit 11).

### Decision

The Customer’s entire letter claim focused primarily and almost exclusively on the investments of a prior broker and not Mr. Goodin. The 4-pages claim at Exhibit 9 has only one meaningful sentence directed to purported wrongdoing by Mr. Goodin as follows: “When LPL’s agent [Redacted Name] sought to resign as the investment advisor on the account, the newly appointed LPL investment advisor Lee Godwin sold the highly appreciated low-cost mutual funds in the Trust account, and created an unnecessary taxable (sic) long term gain for the Trust, replacing the low cost funds with higher cost mutual funds.”

I give no credence to the BrokerCheck® reference “unsuitable sale of mutual funds” outside of the context of the generation of capital gains subject to tax. The investments that caused the capital gains and subsequent taxes of \$8,450.00 were made on the advice of Mr. Goodin after his review was solicited by the Co-trustee of the Customer’s trust. The transactions were made only after the advice was sent to and discussed with the Co-Trustee and approved by both Co-Trustees. The Co-Trustees received confirmations and statements reflecting the transactions with no objections raised. The investments were made consistent with the Co-trustee agreements at Exhibits 2, 3 and 4. The Customer continues to hold the FS BDC and the HMS Income Fund securities at LPL Financial LLC. Of significance is that Mr. Goodin advised the Co-trustees in advance of the sales that there would be a capital

gain of about \$50,000.00 with tax consequences, but, it was expected that the gains (and consequential taxes) would be totally or significantly offset by capital losses on the redemption of other REIT and account investments. It is also noteworthy that the advice to sell the existing positions was given to meet the Customer's desired long-term growth objectives which it did. Further, the new securities resulted in significantly reduced expense ratios and management fees compared to the replaced JP Morgan Growth mutual funds and Innealta ETF products then in the account. The new securities were conservative, actively managed products (the American Funds Active Core, Model Wealth Portfolios) together with a better track record of performance.

On the pleadings, oral testimony and documentary evidence presented, I find that the Customer did not suffer any tax obligation because of capital gains due to the unsuitable sale of mutual funds by Claimant. The rebalanced investments were suitable, conservative, actively managed, and consistent with the account's long-term growth objective. The possibility of capital gains tax with the expectation of reducing the exposure by the losses in other sales was fully explained and known to the Customer and no objection was raised.

The Arbitrator finds that the allegations are both clearly erroneous and false and should be expunged pursuant to Rule 2080 (b)(1)(A) and (C). Further, the Arbitrator finds it serves no meaningful investor protection or regulatory value to keep this claim on the record of this Claimant but instead causes unwarranted harm to the Claimant.

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: December 28, 2020 1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing:                                      March 25, 2021                                      1 session	

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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**

John P. Cullem

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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**

***John P. Cullem***

John P. Cullem  
Sole Public Arbitrator

**03/31/2021**

Signature Date

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March 31, 2021

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