

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Paul K. Kiker

Case Number: 20-03206

vs.

Respondent
LPL Financial Corporation

Hearing Site: Atlanta, Georgia

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 Paul K. Kiker (“Claimant”): Stephen D. Councill, Esq., Councill & Gunnemann LLC, Atlanta, Georgia.

For Respondent LPL Financial Corporation, LPL Financial LLC appeared as the real party in interest (“Respondent”): Jon D. Kaplon, Esq., LPL Financial LLC, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.
Claimant signed the Submission Agreement: September 11, 2020.

Statement of Answer filed on or about: December 3, 2020.
Respondent signed the Submission Agreement: December 3, 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 and denied any wrongdoing.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1709975 and 2037324 from his CRD records.

In the Statement of Answer, Respondent requested that all fees in connection with this proceeding, including all hearing fees, as well as filing fees, and all other fees and costs, be allocated to Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On March 9, 2021, Claimant advised that the customers in Occurrence Numbers 1709975 and 2037324 (each a "Customer" and, collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). Claimant also filed copies of the FedEx proof-of-delivery for the Notices.

The Panel conducted a recorded, telephonic hearing on March 29, 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 Customers did not participate in the expungement hearing. The Panel found that the Customers had notice of the expungement request and hearing.

The Panel reviewed Claimant's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documentation related to Occurrence Number 1709975, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant contributed to the settlement amount.

The Panel noted that the dispute related to Occurrence Number 2037324 was not settled and, therefore, there was no settlement documentation to review.

In recommending expungement of Occurrence Number 2037324, the Panel relied upon the following documentary or other evidence: Claimant's testimony and Respondent's investigation into the Customer's complaint.

The Panel has provided an explanation of the decision for Occurrence Number 1709975 in this Award. The explanation is for the information of the parties only and is not precedential in nature.

The Award in this matter may be executed in counterpart copies.

FINDINGS

The Panel concluded that Claimant's error in connection with Occurrence Number 1709975 was not intentional. He testified that he checked the "Income Rider" box on the annuity application that he prepared for the Customer. However, the Panel finds that he was negligent in not reviewing and noticing that the annuity contract did not contain the income rider, as requested by the Customer. Additionally, Claimant failed to review the annuity statements that he received. If he had done so, the error would have been discovered much earlier than it was.

While the Panel was sympathetic to Claimant's concern about having Occurrence Number 1709975 on his record, the Panel was compelled to follow Rule 2080. The Panel found that none of the Rule 2080 requirements for expungement were met. Claimant impressed the Panel as honest and trustworthy. He acknowledged his negligence in not making sure that the issued annuity contract was consistent with what the Customer desired.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to Occurrence Number 2037324 from registration records maintained by the CRD for Claimant Paul Kell Kiker (CRD Number 4066487) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Kell Kiker 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

Claimant testified that the nature of the investment was fully explained to the Customer and understood by the Customer. The annuity was issued in 2007, yet the complaint was not made until 2015, indicating that the Customer had no issue with the annuity for many years. Further, the Customer failed to provide any specific allegation of wrongdoing on the part of Claimant. The Panel finds that, due to no fault of Claimant, the Customer was discontented with the performance of his annuity when compared to the overall performance of the market.

2. Claimant's request for expungement of Occurrence Number 1709975 from his registration records maintained by the CRD is 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 = \$ 1,575.00

**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 = \$ 1,900.00
Member Process Fee = \$ 3,750.00

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: January 8, 2021 1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: March 29, 2021 1 session	
Total Hearing Session Fees	= \$ 2,250.00

The Panel has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Harry G. Mason	-	Public Arbitrator, Presiding Chairperson
James R. Stewart, Jr.	-	Public Arbitrator
Philip Michael Moran	-	Non-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.

Concurring Arbitrators' Signatures

Harry G. Mason

Harry G. Mason
Public Arbitrator, Presiding Chairperson

04/13/2021

Signature Date

James R Stewart, Jr.

James R. Stewart, Jr.
Public Arbitrator

04/12/2021

Signature Date

Philip Michael Moran

Philip Michael Moran
Non-Public Arbitrator

04/13/2021

Signature Date

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April 13, 2021

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