

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

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In the Matter of the Arbitration Between:

Claimant  
Scott M. Fitzgerald

Case Number: 20-03207

vs.

Respondent  
Royal Alliance Associates, Inc.  
Vanderbilt Securities, LLC

Hearing Site: New York, New York

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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. Members

**REPRESENTATION OF PARTIES**

For Claimant Scott M. Fitzgerald: Louis Tambaro, Esq., Offit Kurman, P.A., Iselin, New Jersey.

For Respondent Royal Alliance Associates, Inc.: James V. Noblett, Esq., Jersey City, New Jersey.

For Respondent Vanderbilt Securities, LLC: Charles M. O'Rourke, Esq., Woodbury, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: September 11, 2020.

Scott M. Fitzgerald signed the Submission Agreement: September 11, 2020.

Statement of Answer filed by Respondent Royal Alliance Associates, Inc on or about: November 4, 2020.

Royal Alliance Associates, Inc. signed the Submission Agreement: September 15, 2020.

Statement of Answer filed by Respondent Vanderbilt Securities, LLC on or about: October 28, 2020.

Vanderbilt Securities, LLC signed the Submission Agreement: October 27, 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 Royal Alliance Associates, Inc. did not oppose Claimant’s expungement request.

In the Statement of Answer, Respondent Vanderbilt Securities, LLC denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 1252322 and 1300048; compensatory damages in the amount of \$1.00 jointly and severally from the Respondents; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent Royal Alliance Associates, Inc. reserved the right to seek attorneys’ fees and arbitration costs, including FINRA member surcharges and/or fees.

In the Statement of Answer, Respondent Vanderbilt Securities, LLC requested that Claimant’s request for expungement and for damages in the amount of \$1.00 be denied; and Claimant bear all FINRA filing fees and Respondent Vanderbilt Securities, LLC’s assessment of fees by FINRA, and reasonable legal fees.

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.

Respondent Royal Alliance Associates, Inc. filed Statement of Answers on September 15, 2020 and October 28, 2020 which were deficient. They were not sent to, or considered by, the Arbitrator.

On June 24, 2021, Claimant advised that the customer in Occurrence Numbers 1252322 and 1300048 is deceased.

The Arbitrator conducted a recorded, telephonic hearing on June 29, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent Royal Alliance Associates, Inc did not participate in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

Respondent Vanderbilt Securities, LLC participated in the expungement hearing and opposed Claimant’s request for expungement.

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 Number 1252322, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator noted that Claimant contributed to the settlement amount. However, expungement is still appropriate because Claimant received a document from the customer for an Annuity and "failed to date" the document. Claimant could not post-date the document and chose to settle the complaint by paying a fine, returning his commission on said complaint of \$4,039.00 and paid the customer \$5,900.00 to cover any tax liability.

The Arbitrator noted that the dispute related to Occurrence Number 1300048 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings, exhibits, Claimant's testimony, Claimant's BrokerCheck® Report, and the settlement agreement.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the recorded 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 1252322 from registration records maintained by the CRD for Claimant Scott M. Fitzgerald (CRD Number 2149097) with the understanding that, pursuant to Notice to Members 04-16, Claimant Scott M. Fitzgerald 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:

The customer was dissatisfied with his annuities. The customer approved the annuities and signed a contract to purchase the annuities. Claimant's testimony at the hearing was credible and consistent with the documentary evidence admitted at the hearing. Claimant is a professional with over 30 years' experience in the financial industry. The customer's complaints against Claimant are the only complaints made against the Claimant in 30 years. Expunging these complaints would not have an adverse effect on prospective investor protection nor would the integrity of the CRD system or any regulatory requirements be adversely effected by expunging this Claimant's record.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1300048 from registration records maintained by the CRD for Claimant Scott M. Fitzgerald (CRD Number 2149097) with the understanding that, pursuant to Notice to Members 04-16, Claimant Scott M. Fitzgerald 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 factually impossible or clearly erroneous.

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

The customer alleged that he did not know Claimant was his financial advisor/agent. Documentary evidence produced at the hearing from American Skandia and Hartford/Putnam clearly show that that the customer and Claimant knew each other and conducted business going back to 1998 and communicated with each other regarding the customer's annuities. Testimonial evidence by Claimant buttressed the documentary evidence and the fact that the parties were known to each other.

3. 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
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*\*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 persons at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Vanderbilt Securities, LLC and Royal Alliance Associates, Inc. are each assessed the following:

Member Surcharge = \$ 150.00

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

May 11 and 12, 2021, postponement jointly requested by the Claimant = \$ 50.00

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Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fees to Claimant.

**Last-Minute Cancellation Fees**

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

May 11 and 12, 2021 cancellation requested jointly by the parties = \$ 600.00

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Total Last-Minute Cancellation Fees = \$ 600.00

The Arbitrator has assessed the total last-minute 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 13, 2021 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session = \$ 100.00  
Hearing: June 29, 2021 2 sessions

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Total Hearing Session Fees = \$ 150.00

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**

Eugene G. P. Byrne

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Arbitrator's Signature**

***Eugene G. P. Byrne***

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Eugene G. P. Byrne  
Sole Public Arbitrator

**07/19/2021**

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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.

July 20, 2021

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