

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Refice IRA

Case Number: 20-03291

vs.

Respondent
LPL Financial LLC

Hearing Site: Philadelphia, Pennsylvania

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: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Robert Refice IRA: Michael Hill, Esq., Menzer & Hill, P.A., Boca Raton, Florida*.

For Respondent LPL Financial LLC: Kristine R. Thompson, Esq., Saretsky Hart Michaels + Gould, Birmingham, Michigan.

*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant's counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: September 17, 2020.

Robert Refice IRA signed the Submission Agreement: September 17, 2020.

Statement of Answer filed by Respondent on or about: January 29, 2021.

LPL Financial LLC signed the Submission Agreement: December 10, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence and gross negligence; misrepresentation; omission of a material fact; failure to supervise; breach of fiduciary duty; and breach of contract. The causes of action relate to Franklin Square Capital Corporation II; FS Energy & Power Fund; and Resource Real Estate Opportunity REIT.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages of approximately \$114,000.00; award of statutory damages pursuant to state laws: a) rescissionary damages, b) lost opportunity damages, c) accrued statutory interest, and d) attorneys' fees; costs; filing and hearing fees; and other remedies that the Panel deems just and appropriate.

In the Statement of Answer, Respondent requested that the Statement of Claim be denied in its entirety.

Respondent filed a request for expungement, on behalf of Unnamed Party Michael John Mattie ("Mattie"), of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 26, 2021, Claimant filed a notice of voluntary dismissal with settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On November 30, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Mattie to which no response was filed.

The Panel conducted a recorded, telephonic hearing on February 16, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Mattie.

Claimant and counsel did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed Unnamed Party Mattie's BrokerCheck® Report . The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, 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 request for expungement and that Unnamed Party Mattie did not contribute to the settlement amount.

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

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

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 the above-captioned arbitration (Occurrence Number 2092283) from registration records maintained by the CRD for Unnamed Party Michael John Mattie (CRD Number 2210787) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Michael John Mattie 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 12805 of the Code of Arbitration Procedure ("Code"), the Panel 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 Panel has made the above Rule 2080 findings based on the following reasons:

Claimant signed a multitude of documents substantiating the testimony that he was fully informed, understood and accepted the recommended investment plan; that the plan was consistent with Claimant's stated income and net worth, his investable assets, and his investment objectives; and that with his level of financial sophistication he acknowledged his understanding and acceptance of the recommended investment plan and the nature of the risks and the liquidity restrictions inherent in the investment vehicles complained of, which appropriately represented 17% of Claimant's total portfolio.

Based upon Unnamed Party Mattie's testimony and the many exhibits bearing the Claimant's signature and confirming the testimony, the Panel finds the claims and allegations to be false and/or clearly erroneous.

FEES

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=\$ 1,425.00
Expungement 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent LPL Financial LLC is assessed the following:

Member Surcharge	=\$ 1,700.00
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: February 2, 2021 1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	=\$ 1,125.00
Hearing: February 16, 2022 1 session	

Total Hearing Session Fees	=\$ 2,250.00
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The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$1,687.50 of the hearing session fees, including \$1,125.00 for the expungement hearing, to Respondent.

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

ARBITRATION PANEL

Gordon M. Wase	-	Public Arbitrator, Presiding Chairperson
Kathleen Jones Spilker	-	Public Arbitrator
Joseph Patrick Murphy	-	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

Gordon M. Wase

Gordon M. Wase
Public Arbitrator, Presiding Chairperson

02/24/2022

Signature Date

Kathleen Jones Spilker

Kathleen Jones Spilker
Public Arbitrator

02/24/2022

Signature Date

Joseph Patrick Murphy

Joseph Patrick Murphy
Public Arbitrator

02/24/2022

Signature Date

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February 25, 2022

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