

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kenneth John Arellano

Case Number: 20-03361

vs.

Respondent
LPL Financial LLC

Hearing Site: Syracuse, New York

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 Kenneth John Arellano: Frances Menzer, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent LPL Financial LLC: Tracey Salmon-Smith, Esq., Faegre Drinker Biddle & Reath LLP, Florham Park, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: September 25, 2020.

Kenneth John Arellano signed the Submission Agreement: September 25, 2020.

Statement of Answer filed by Respondent on or about: December 17, 2020.

LPL Financial LLC signed the Submission Agreement: November 19, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of Form U5 termination entry in Claimant's Central Registration Depository ("CRD") records.

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 expungement of the Form U5 amendments, and those relevant portions of the Form U4, from Claimant's CRD record on the basis that the statement corresponding with occurrence number 2055975 is defamatory in nature, misleading, inaccurate, and/or erroneous; compensatory damages in the amount of \$1.00 from Respondent; and any other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Arbitrator issue an award dismissing any and all allegations of wrongdoing against Respondent; deny any and all demands and requests for damages, costs, and/or fees against Respondent; allocate all arbitration costs and expenses against Claimant; and award such other relief as the Arbitrator may deem appropriate.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

After Claimant's case-in-chief, Respondent moved for dismissal on grounds that Claimant failed to prove the allegations in the Statement of Claim. After due consideration, the Arbitrator preliminarily deferred ruling on Respondent's motion to dismiss. The motion is rendered moot as Claimant's claim is denied.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement is denied.
2. Any and all claims for relief not specifically addressed herein are denied.

ARBITRATOR'S EXPLANATION OF DECISION

After consideration of all the evidence presented, Claimant failed to establish that the challenged disclosures were defamatory in nature, misleading, inaccurate and/or erroneous. Section 26.2 of Respondent's Policy Manual clearly placed Claimant on notice of FINRA regulations requiring member firms to supervise and retain instant messaging and texting in same manner as written correspondence and email communications. The record contains un rebutted evidence supporting the allegations forming the basis for discharge, i.e., that Claimant utilized internal office text messaging via non-firm issued or approved devices to conduct internal electronic correspondence that could not be monitored by Respondent. Irrespective of whether Respondent properly communicated the process for utilizing MyRepChat during rollout, Claimant did not expressly seek approval to utilize iPhones and iWatches purchased by him for his staff to communicate internally for investment related business prior to this rollout. Claimant also in his

last two Financial Advisor Questionnaires answered "No" to the question "Have you used text or instant messaging programs to communicate about securities related business". The evidence presented at the hearing, including Claimant's own testimony, establishes that at least the answer to the most recent questionnaire dated May 20, 2019 was inaccurate.

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 = \$ 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 events giving rise to the dispute. Accordingly, as a party, Respondent LPL Financial 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$50.00/session	= \$	100.00
Pre-Hearing Conferences: February 1, 2021	1 session	
August 5, 2021	1 session	
Two (2) hearing sessions on expungement request @ \$50.00/session	= \$	100.00
Hearing: August 9, 2021	2 sessions	
Total Hearing Session Fees	= \$	200.00

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

John Francis Markuns

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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

John Francis Markuns

John Francis Markuns
Sole Public Arbitrator

08/12/2021

Signature Date

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August 13, 2021

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