

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Alexander Cromwell Dancy

Case Number: 20-03559

vs.

Respondent
LPL Financial LLC

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 Alexander Cromwell Dancy (“Claimant”): Benjamin Winograd, Esq. and Docthor Kennedy, Esq. AdvisorLaw, LLC, Westminster, Colorado.

For Respondent LPL Financial LLC (“Respondent”): Jon D. Kaplon, Esq., LPL Financial LLC, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: October 20, 2020.
Claimant signed the Submission Agreement: October 19, 2020.

Statement of Answer filed on or about: January 19, 2021.
Respondent signed the Submission Agreement: January 19, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim alleging that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository (“CRD”), is defamatory in nature.

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 filed by Respondent and relevant portions of the related Form U4, \$1.00 in compensatory damages, and any other relief the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that this matter and/or any allegations of wrongdoing or defamation against it be dismissed; that any and all demands and requests for damages, costs and/or fees against Respondent be denied; that all arbitration costs, hearing fees, and other fees and expenses be allocated against Claimant; and such other relief as the Arbitrator deems appropriate.

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

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

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 The explanation is for the information of the parties only and is not precedential in nature.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, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's request for expungement of the Form U5 filed by Respondent and relevant portions of the related Form U4 from his registration records maintained by the CRD is denied.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

EXPLAINED DECISION

Claimant had a verbal agreement to join another broker dealer ("New BD") in December 2016. He stayed with Respondent into the new year to receive certain commission income. Claimant requested Respondent's approval of his outside business activities, stating in the request that he would be introducing a firm ("Firm") and its managing director ("CB") to broker dealers in connection with marketing for a financial product. Respondent denied Claimant's request.

Claimant flew to a meeting on February 7, 2017 ("Meeting"), at which he and CB met with New BD representatives. An employee of New BD ("MT") testified that he met Claimant during the Meeting to "welcome him aboard." Claimant maintained that the Meeting was just part of his due diligence in looking for a firm which would allow him to engage in outside business activities with the Firm. However, Claimant told Respondent's investigator that he was at the Meeting to introduce CB to the New BD.

When Respondent’s investigator discovered notes on Claimant's office computer about the Meeting, he asked Claimant what he did at the Meeting. Claimant resigned within an hour of learning that the notes were discovered. Claimant testified that he resigned because he believed that Respondent’s investigator had already made up his mind that something wrong had been done and MT told him to resign. MT testified that he did not tell Claimant to resign, but he did discuss several options with Claimant, including resignation.

I find that the preponderance of evidence leads to the conclusion that, during the Meeting, Claimant was engaged in the exact outside business activities that Respondent had specifically declined to approve. Claimant testified repeatedly that he was not compensated for the Meeting and that he did not receive any compensation from the Firm until the fall of 2018. I accept that testimony as accurate. However, I find that the Meeting was the beginning of Claimant's efforts to profit from the Firm. I also find that he had a reasonable expectation of future profit from his activities at the Meeting.

Claimant argued that Respondent should not have indicated on the Form U5 that he had resigned while under investigation, because the allegations raised during the investigation were unproven and not true. Also, MT testified that Question 7F(1) on the Form U5 should not have been checked "yes" because the allegations were unproven. MT stated that, if the allegation of engaging in outside business activities without Respondent’s approval were proven, then a "yes" answer would be appropriate. However, I find that Claimant had an opportunity to remain with Respondent and explain what he did at the Meeting. By leaving abruptly and resigning, he chose to forgo that opportunity. His reaction to being asked about the Meeting created the impression that he realized he had been caught doing something he should not have been doing.

Therefore, I find that Claimant was in violation of FINRA Rule 3270 when he attended the Meeting and that the Form U5 was accurate and not potentially defamatory. I find that the preponderance of the evidence leads to the conclusion that Dancy was engaged in something he should not have been doing on February 7, 2017, i.e., the very outside employment activities that had previously been denied.

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
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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 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 @ \$50.00/session = \$ 50.00
Pre-Hearing Conference: February 22, 2021 1 session

Two (2) hearing sessions @ \$50.00/session = \$ 100.00
Hearing: May 18, 2021 2 sessions

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

Harry G. Mason

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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

Harry G. Mason

Harry G. Mason
Sole Public Arbitrator

05/28/2021

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.

May 28, 2021

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