

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

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In the Matter of the Arbitration Between:

Claimants

Richard Baucom  
Elizabeth Baucom  
Richard Baucom IRA

Case Number: 20-03751

vs.

Respondent

LPL Financial LLC

Hearing Site: Philadelphia, Pennsylvania

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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: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Richard Baucom, Elizabeth Baucom, and Richard Baucom IRA: Michael S. Hill, Esq., Menzer & Hill, P.A., Boca Raton, Florida.

For Respondent LPL Financial LLC: Eric A. Michaels, Esq., and Janine M. Lucas, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: November 6, 2020.

Elizabeth Baucom signed the Submission Agreement: November 6, 2020.

Richard Baucom signed the Submission Agreement: November 6, 2020.

Richard Baucom IRA signed the Submission Agreement: November 6, 2020.

Statement of Answer filed by Respondent on or about: January 28, 2021.

LPL Financial LLC signed the Submission Agreement: February 4, 2021.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of state securities statutes; breach of fiduciary duty; negligence; gross negligence; misrepresentation/omission; negligent

misrepresentation/omission; unjust enrichment; failure to supervise; and vicarious & control person liability.

The causes of action relate to Franklin Square Capital Corporation III (“FSKR”), Franklin Square Energy & Power Fund (“FSEP”), Cole Credit Property Trust IV (“COLE”), and CIM Real Estate Finance Trust.

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, Claimants requested compensatory damages of approximately \$292,000.00; statutory damages pursuant to state laws: (a) recessionary damages; (b) lost opportunity damages; (c) accrued statutory interest, and (d) attorneys’ fees; punitive damages; costs; filing and hearing fees; and other remedies the Panel deems proper and appropriate.

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

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On September 1, 2021, Respondent LPL Financial LLC filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure (“Code”). On October 8, 2021, Claimants filed a response opposing the Motion to Dismiss. On October 19, 2021, Respondent filed a Reply in Support of its Motion to Dismiss.

On December 17, 2021, the Panel heard oral arguments on the Motion to Dismiss. On December 17, 2021, the Panel granted the Motion to Dismiss on the grounds that:

FINRA Rule 12206(a) (the “Eligibility Rule”) states, in part, “No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim”. The Statement of Claim here was filed more than six years after the initial purchase of the investments in question. The Panel is aware of its power to decide whether or not the Eligibility Rule was “tolled” by Respondent’s actions and omissions. After reading the Statement of Claim and the moving papers, and hearing oral argument by the parties, this Panel decides to grant the Respondent’s Motion to Dismiss and the claim is, therefore, dismissed.

Respondent LPL Financial LLC’s Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

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

## **AWARD**

After considering the pleadings, the Motion to Dismiss and all responses thereto, and the arguments presented during the pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed without prejudice pursuant to Rule 12206 of the Code.

## **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
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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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent LPL Financial LLC 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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	=\$ 2,250.00
Pre-Hearing Conferences: March 3, 2021	1 session
December 17, 2021	1 session

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

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

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

**ARBITRATION PANEL**

Guillermo L. Bosch	-	Public Arbitrator, Presiding Chairperson
Mary L. Sims	-	Public Arbitrator
Louis P. Wagman	-	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**

***Guillermo L. Bosch***

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Guillermo L. Bosch  
Public Arbitrator, Presiding Chairperson

**01/13/2022**

\_\_\_\_\_  
Signature Date

***Mary L. Sims***

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Mary L. Sims  
Public Arbitrator

**01/13/2022**

\_\_\_\_\_  
Signature Date

***Louis P. Wagman***

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Louis P. Wagman  
Public Arbitrator

**01/13/2022**

\_\_\_\_\_  
Signature Date

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January 14, 2022

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