

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

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In the Matter of the Arbitration Between:

Claimants

Paul Kovalkoski  
Maxine Kovalkoski

Case Number: 20-03805

vs.

Respondents

LPL Financial LLC  
Ronald Fair Paull III

Hearing Site: Jersey City, New Jersey

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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 and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants Paul Kovalkoski, and Maxine Kovalkoski: Christopher B. Jones, Esq., Christopher B. Jones, P.C., Scranton, Pennsylvania.

For Respondent LPL Financial LLC (“LPL”): Kelsey Vasko, Esq., LPL Financial LLC, San Diego, California.

For Respondent Ronald Fair Paull III (“Paull”): Nancy L. Hendrickson, Esq., O'Hagan Meyer LLC, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: January 6, 2021.

Maxine Kovalkoski signed the Submission Agreement: November 6, 2020.

Paul Kovalkoski signed the Submission Agreement: November 6, 2020.

Statement of Answer filed by LPL on or about: March 19, 2021.

LPL signed the Submission Agreement: March 5, 2021.

Statement of Answer filed by Paull on or about: March 19, 2021.

Paull signed the Submission Agreement: January 21, 2022.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: misrepresentation; negligence; breach of fiduciary duty; breach of contract; failure to supervise; and violations of Pennsylvania Securities Act and Pennsylvania Unfair Trade Practices and Consumer Protection Law. The causes of action relate to mutual funds and Real Estate Investment Trusts (“REITS”).

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

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested approximately \$90,000.00 in compensatory damages; punitive damages; attorneys’ fees; costs; and interest as allowed by law.

In the Statement of Answer, LPL requested that the Statement of Claim be dismissed with prejudice; costs; and such other relief as deemed just and equitable.

In the Statement of Answer, Paull requested that Claimant’s claims be denied in their entirety with prejudice; fees and costs; attorneys’ fees; expungement of any reference to this matter from his CRD records; and such other and further relief as deemed fair and equitable.

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

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

On July 27, 2021, Respondent LPL filed a Motion to Compel and for Sanctions. On August 9, 2021, Paull joined in LPL’s Motion to Compel. Claimants did not submit a response to the Motion to Compel and for Sanctions. On August 10, 2021, LPL filed a Reply in support of its Motion to Compel and for Sanctions. On August 18, 2021, the Arbitrator granted the Motion to Compel and ruled that if Claimants failed to comply with the Order by October 18, 2021, Claimants’ claims would be dismissed with prejudice pursuant to Rules 12212(a) & (c) and 12511(a) & (b) of the Code.

On October 19, 2021, LPL submitted correspondence advising that Claimants were in violation of the August 18, 2021 Order and requested that the Arbitrator dismiss Claimants’ Statement of Claim with prejudice. Claimants did not submit a response. On November 2, 2021, the Arbitrator granted LPL’s request to dismiss Claimants’ Statement of Claim with prejudice.

On November 22, 2021, Paull filed a Motion requesting expungement of this matter (Occurrence Number 2109224) as well as Occurrence Numbers 1659218; 1727288; 1734897; and 1707818 from his CRD records, to which no response was filed.

On December 22, 2021, Paull filed a Motion for Zoom Hearing. Claimants and LPL did not file a response. On January 5, 2021, the Arbitrator denied Paull’s Motion for Zoom Hearing.

The Arbitrator conducted a recorded, telephonic hearing on January 13, 2022, so the parties could present oral argument and evidence on Paull's request for expungement.

At the expungement hearing, Paull withdrew without prejudice the request for expungement of Occurrence Numbers 1659218; 1727288; 1734897; and 1707818.

Claimants and LPL did not participate in the expungement hearing.

### **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. Claimants' claims are dismissed with prejudice.
2. Paull's request for expungement of the above-captioned arbitration (Occurrence Number 2109224) from registration records maintained by the CRD is denied.

### **ARBITRATOR'S EXPLANATION OF DECISION**

Expungement is an extraordinary remedy. Claimants Paul and Maxine Kovalkoski allege that Paull made unsuitable investments for them, which he denies. Though notified of this hearing, the Claimants did not appear at the hearing, and thus Paull, as the requesting party, appeared ex parte.

In response to the Arbitrator's questioning during the hearing, Paull: (a) acknowledged that all his evidence was included with his Motion for Expungement ("Expungement Request"); (b) confirmed that the BrokerCheck Report, provided in Exhibit A to that Request is the most current version available; and (c) stated that the claim underlying the Kovalkoski matter was not settled and consequently no agreement existed between the Claimants and Paull that conditioned the former's absence from the expungement hearing on any possible benefit to be received.

Whether a particular investment is unsuitable for a given customer is determined at the instant in time, not after, that investor purchases that investment taking all circumstances, including investor knowledge and sophistication or lack thereof, into account. Post-purchase performance of that investment, i.e., whether it yielded a profit or loss for the customer, is irrelevant to unsuitability.

The party requesting expungement bears the burden of proving, under FINRA Rule 2080, one of the following grounds, with respect to the underlying claim made against him/her, and for which a judicial or arbitration panel must make an affirmative finding: (a) the claim, allegation or information is factually impossible or clearly erroneous; (b) the registered person [requesting party] was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; or (c) the claim, allegation or information is false. Of these three possible findings, only findings (a) and (c) are relevant here -- as Paull so recognizes in his Expungement Request -- as he specifically advised the Claimants to make the specific investments at issue here.

After due and careful consideration of the evidence submitted and Paull's oral testimony at the hearing, the Arbitrator is not persuaded that either of Rule 2080 grounds (a) and (c) exist. Paull contends the investments at issue, which he recommended and which the Claimants purchased based on those recommendations, were suitable for the Claimants. Paull points to what he believed to be sufficient financial acumen of the Claimants, the size of their total asset base which the Claimants had amassed going into their retirement prior to making these investments, and the relatively small percentage of that base which these investments consumed. Yet, several extenuating circumstances exist which counterbalance Paull's views and cast considerable doubt, in the Arbitrator's mind, that the investments were suitable for the Claimants. For example, the vast majority of those assets were in cash, and the recommended investments included, among others, two real estate investment trusts: one for industrial facilities that mainly comprised distribution warehouses, and the other for managing debt and equity investments in medical real estate.

Furthermore, Paull testified during the hearing that all the Claimants' brokerage application forms for LPL (a broker-dealer which is not a party to the Expungement Request) and subscription agreements for the specific REIT investments at issue were not completed by the Claimants but rather by Paull's secretary who was present during in person meetings Paull conducted with the Claimants in late 2014. During those meetings, his secretary completed those forms based on what Paull instructed her, with the Claimants having then signed those forms.

As the hearing was ex parte, there was no independent proof, whether witness testimony or documentary evidence, that corroborated Paull's views and particularly which would have provided insight into exactly what the Claimants knew at the time they made the investments at issue and particularly what they understood about those investments and the associated financial risks they were then about to incur. It is particularly concerning to the Arbitrator that Paull did not include an affidavit or declaration from the Claimants as to their financial knowledge, understanding of those investments, the advice they received from Paull and their state of mind at that time.

Thus, in the absence of sufficient proof, the Arbitrator cannot find that the claim of unsuitability that underlies this arbitration is factually impossible or clearly erroneous, or false.

Accordingly, the Expungement Request, with respect to Occurrence Number 2109224 is 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	= \$ 975.00
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	= \$ 1,100.00
Member Process Fee	= \$ 3,750.00

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$ 200.00
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LPL submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	= \$ 200.00
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The Arbitrator has assessed the total discovery-related motion fees jointly and severally to Claimants.

**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 @ \$450.00/session Pre-Hearing Conference: May 3, 2021	1 session = \$ 450.00
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One (1) hearing session on expungement request @ \$1,125.00/session Hearing: January 13, 2022	1 session = \$ 1,125.00
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Total Hearing Session Fees	= \$ 1,575.00
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The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Respondents.

The Arbitrator has assessed the \$1,125.00 hearing session fees for the expungement hearing to Paull.

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

**ARBITRATOR**

Peter L. Michaelson

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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**

***Peter L. Michaelson***

Peter L. Michaelson  
Sole Public Arbitrator

**01/24/2022**

Signature Date

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February 02, 2022

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