

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Kurt Joseph Kerrigan

Case Number: 20-04117

vs.

Respondent
LPL Financial LLC

Hearing Site: Dallas, Texas

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 Kurt Joseph Kerrigan (“Claimant”): Harris Freedman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent LPL Financial LLC (“Respondent”): Rochelle B. Mayfield, Esq., LPL Financial LLC, Fort Mill, South Carolina.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 2020.
Claimant signed the Submission Agreement: December 17, 2020.

Statement of Answer filed on or about: February 9, 2021.
Respondent signed the Submission Agreement: December 24, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 1648049, compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent made no specific request for relief.

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

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 19, 2021, the parties filed a Joint Agreement to Reduce Panel Pursuant to FINRA Rule 13401(c) of the Code of Arbitration Procedure ("Code"). Accordingly, a single arbitrator was appointed in this matter.

On July 7, 2021, Claimant advised that the customer in Occurrence Number 1648049 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice"). On July 12, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Notice. Claimant also filed a copy of the FedEx tracking information available online for the Notice.

On August 9, 2021, the Customer submitted correspondence opposing Claimant's request for expungement.

On September 13, 2021, Claimant advised that the Customer was served with the Statement of Claim and notice of the date and time of the rescheduled expungement hearing ("2nd Notice"). On September 20, 2021, Claimant filed an Affidavit confirming that the Customer was served with the 2nd Notice. Claimant also filed a copy of the FedEx tracking information available online for the 2nd Notice.

The Arbitrator conducted a recorded, telephonic hearing on October 19, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent participated in the expungement hearing and, as stated in the Statement of Answer, did not oppose the request for expungement.

The Customer also participated in the expungement hearing and opposed the expungement request.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator was unable to review the settlement documentation in Occurrence Number 1648049. Claimant submitted an affidavit that he could not locate the settlement documentation, despite diligent efforts. Based on Claimant's testimony and the evidence, the Arbitrator considered the amount of payment made to any party to the settlements and noted that Claimants contributed to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; Claimant's exhibits and testimony; Respondent's support of expungement request; and the Customer's testimony.

AWARD

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

1. The Arbitrator recommends the expungement of all references to Occurrence Number 1648049 from registration records maintained by the CRD for Claimant Kurt Joseph Kerrigan (CRD Number 4030488) with the understanding that, pursuant to Notice to Members 04-16, Claimant Kurt Joseph Kerrigan 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 13805 of the Code, the Arbitrator 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 Arbitrator has made the above Rule 2080 findings based on the following reasons:

Evidence indicated that the income information provided by the Customer, on which tax returns prepared by Claimant were based, was erroneous, thereby inflating the Customer's income amount. The source of the erroneous income information was 1099 forms provided by a client of the Customer (Client) which erroneously included sales tax amounts. The incorrect 1099s inflated the Customer income over a period from 2002-2005.

Each tax year, Claimant advised the Customer to make quarterly estimated tax payments, and the Customer fell behind on the estimated tax payments. The Customer alleged in the underlying claim that the Customer believed the income amounts reported on her tax returns were high, but did not realize the cause until approximately 2010. When she brought this to Claimant's attention, Claimant advised the Customer that if she requested the Client file amended 1099's for the years for which the Client had included sales tax amounts in the 1099s, the Customer might be able to obtain IRS refunds for some of this erroneous tax liability. Since this was Customer's largest client, she elected not to do so.

Per Respondent, the claim was settled to avoid protracted litigation. Claimant paid \$1,000.00 of the settlement personally and the balance was paid by his insurance carrier.

The full settlement amount is consistent with amounts routinely paid to avoid costs and risks of protracted litigation.

Claimant relied on 1099 information provided by the Customer, and the underlying claim is factually erroneous and false, as Claimant is entitled to rely on Customer provided information. Claimant's request meets both the FINRA Rule 2080(b)(1)(A) standard and the Rule 2080(b)(1)(C) standard for expungement.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim 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(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 = \$ 1,900.00

Member Process Fee = \$ 3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

August 17, 2021, postponement requested by Claimant WAIVED

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

Fees apply when a hearing on the merits is cancelled within three business days before the start of a scheduled hearing session:

August 17, 2021, cancellation requested by Claimant WAIVED

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 @ \$1,125.00/session		= \$	1,125.00
Pre-Hearing Conference: April 26, 2021	1 session		

One (1) hearing session on expungement request @ \$1,125.00/session		= \$	1,125.00
Hearing: October 19, 2021	1 session		

Total Hearing Session Fees		= \$	2,250.00
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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

Andrea U. Calve

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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

Andrea U. Calve

Andrea U. Calve
Sole Public Arbitrator

11/02/2021

Signature Date

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November 02, 2021

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