

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Lisa R. Kulhavi

Case Number: 21-00170

vs.

Respondent
LPL Financial, LLC

Hearing Site: Tampa, Florida

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 Lisa R. Kulhavi: N. Nancy Ghabai, Esq., Ghabai Law Group, LLC, Boston, Massachusetts.

For Respondent LPL Financial, LLC: Sara B. Davis, Esq., LPL Financial, LLC, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2021.

Lisa R. Kulhavi signed the Submission Agreement: January 22, 2021.

Statement of Answer filed by Respondent on or about: April 6, 2021.

LPL Financial, LLC signed the Submission Agreement: April 6, 2021.

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 supported Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: expungement of Occurrence Numbers 2088944 and 2088945 from Claimant's CRD records and public BrokerCheck® Report pursuant to FINRA Rule 2080(b)(1)(A) and/or (b)(1)(C) because the allegations are clearly erroneous, factually impossible and false; an award of damages of \$1.00 from Respondent; and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent opposed Claimant's request for monetary damages from Respondent, and opposed Claimant's Statement of Claim insofar as it may be construed to allege any wrongdoing on the part of Respondent.

OTHER ISSUES CONSIDERED AND DECIDED

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

Occurrence Numbers 2088944 and 2088945 were separate complaints filed by each of two spouses ("Customers") and are substantially related to the same matter.

On June 30, 2021, Claimant advised that the Customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

On September 1, 2021, the Customers submitted a statement detailing their opposition to Claimant's expungement request and provided various exhibits.

On September 1, 2021, the Customers submitted a Motion to Postpone the expungement hearing scheduled for September 9, 2021. On September 1, 2021, the Parties submitted a joint opposition to the Motion to Postpone. On September 1, 2021, the Customers submitted a reply in support of their Motion to Postpone. On September 1, 2021, the Arbitrator denied the Motion to Postpone.

The Arbitrator conducted a recorded hearing by videoconference on September 9, 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, supported the request for expungement.

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

On September 9, 2021, the Customers submitted a post-hearing statement and exhibit stating that the New York Department of Financial Services had notified them via email, as the expungement hearing was occurring, that their complaint against Claimant had been reopened.

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 occurrences in the CRD.

The Arbitrator noted that the dispute related to Occurrence Numbers 2088944 and 2088945 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Exhibit 1 (Claimant's BrokerCheck® Report); Exhibits 2 and 3 (Strategic Management Agreements); Exhibits 4 and 5 (Annuity Historical and Hypothetical Illustrations); Exhibits 6 and 7 (LPL New Account Applications, direct business); Exhibits 8 and 9 (Jackson National Client Acknowledgement Forms); Exhibits 10 and 11 (Important Information Regarding Your Variable Annuity); Exhibits 12 and 13 (Correspondence from Underlying Customers); Exhibit 14 (LPL Denial Letter); pre-hearing submissions of underlying Customers (no Exhibit numbers); and testimony of the Customers and Claimant.

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. Claimant's claim for \$1.00 in compensatory damages is denied.
2. The Arbitrator recommends the expungement of all references to Occurrence Numbers 2088944 and 2088945 from registration records maintained by the CRD for Claimant Lisa R. Kulhavi (CRD Number 2544061) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lisa R. Kulhavi 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

Claimant is a veteran financial advisor with a spotless record for twenty-six (26) years, involving many hundreds of clients and thousands of transactions. The two underlying complaints are virtually the same, by former life partners, now married. They relate to the same products, same timeframe, same alleged acts and were brought simultaneously.

Claimant holds an MBA, is a Certified Financial Planner (CFP), Chartered Financial Consultant (ChFC), and Certified Professional Retirement Counselor (CRPC). She has received no complaints other than the instant two, no FINRA arbitrations, and no state, regulatory, or FINRA investigation. Additionally, she has received no letters of warning or

caution, and no customer has ever complained to her or her employer about any annuity purchased because of her counsel.

The Customers are both sophisticated long-term investors who actively participated in all transactions. They are smart, educated, and experienced in business. Their pre-purchase analyses appeared thorough.

The Customers were Claimant's clients since 2013. She met and spoke with them frequently; they held semi-annual "formal" reviews, as well as at least monthly – and sometimes weekly – discussions and in-person conferences. They received frequent detailed statements from both Respondent and the annuity issuers. Despite these regular encounters, Claimant had no advanced warning the Customers were so unhappy until the complaint letters arrived.

The Customers studied, researched, discussed with Claimant, and affirmatively approved the annuity purchases at issue. Their new-account applications (Exhibits 6 and 7) with Respondent attest to their investment goals. They initially presented a complex set of issues and needs: they had no financial plan, no strategy, a mother's estate looming, life insurance and long-term care needs, and careers in real estate which all agreed could be risky. Their stated investment objectives were growth, long-term growth, and capital appreciation. According to their applications, neither customer had liquidity needs.

In addition to the annuities at issue, the Customers had "Strategic Asset Management" accounts at Respondent which accrued 1.5% fees annually, charged quarterly. The investment allocation in these accounts was consistent with their goals.

Claimant and her staff spent significant time with the Customers on the annuity selection ("...more than any other clients."). A variable annuity appeared appropriate to them because they wanted to avoid or defer taxes, to participate in market growth but avoid fluctuations, and wanted income guarantees and death benefits.

Claimant complied with FINRA standards in dealing with the Customers, had a reasonable basis for her recommendations, was diligent in understanding and satisfying their stated objectives, and in the unique multiple- and complex-need situation, provided suitable recommendations. The Customers had many opportunities to examine, understand and question terms, features and benefits of the proposed annuities.

The Customers asserted liquidity, income streams and fees were important, but the Jackson National annuities ultimately failed to meet these expectations, so they now aver. Those parameters were well-covered, however, in multiple documents supplied to them before, during, and after the purchases. Definitions and explanations for these – and all – terms of the annuities in question -- were found in sales literature, prospectuses, contracts, historical illustrations, and documents called "Important Information Regarding Your Variable Annuity Purchase." Liquidity, fees, surrender penalties, and income streams -- and all terms -- were explained in documents signed and acknowledged by both Customers. The annuities even had twenty-one (21) days during which the Customers could reverse the purchase: a "free-look" period.

During the annuity sales process, Claimant met with the Customers multiple times, answering many questions until they felt comfortable. She reviewed with the Customers Claimant's Exhibits 4, 5, 6, 7, 8, 9, 10 and 11 at various times; some documents as many as three (3) or more times. Claimant testified, without contradiction by the Customers during the hearing, that these documents explained the various important terms "8 or 9 times" before, and immediately after, the sale. After the annuity contracts were issued (and within the 21-day cancellation period), Claimant reviewed one more time the features and benefits with the Customers.

The annuities performed well, consistent with contractual terms. The Customers were sufficiently happy with the annuities and later put more money into each. At no time did either Customer's annuity lose money. They expressed satisfaction with the performance of their investments and their Jackson National annuities because of the guarantees provided.

On receiving the Customers' complaints, Respondent conducted a full investigation and issued a letter denying their claims. Notably, the Customers did not initiate a FINRA arbitration action, so no settlement has occurred. The Certified Financial Planner Board of Standards also initiated an inquiry (routine in cases where a CFP receives a complaint) and closed the case without taking action against Claimant.

Claimant fulfilled her fiduciary duty and satisfied the Customers' complex financial goals. Documents acknowledged by the Customers accurately disclosed features, benefits, terms, fees and charges, surrender penalties, and income calculations multiple times. Claimant explained each document and answered the Customers' questions and concerns. No credible evidence of wrongdoing in managing the relevant accounts was introduced.

Claimant provided effective, beneficial services to two (2) long-term clients and expungement of both occurrences is appropriate.

3. 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:

Expungement Filing Fee	= \$	1,575.00
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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 is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

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 with a single Arbitrator @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: May 17, 2021	1 session	
Two (2) hearing sessions on expungement request @ \$1,125.00/session	= \$	2,250.00
Hearing: September 9, 2021	2 sessions	
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Total Hearing Session Fees	= \$	3,375.00

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

Karl A. Vogeler, III

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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

Karl A. Vogeler, III

Karl A. Vogeler, III
Sole Public Arbitrator

09/17/2021

Signature Date

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September 17, 2021

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