

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

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In the Matter of the Arbitration Between:

Claimant  
Richard E. Kaplan

Case Number: 21-00319

vs.

Respondent  
Legacy Asset Securities, Inc.

Hearing Site: Houston, Texas

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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: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Richard E. Kaplan (“Claimant”): Harris Freedman, Esq. and Dochter Kennedy, Esq., AdvisorLaw, LLC, Westminster, Colorado.

For Respondent Legacy Asset Securities, Inc. (“Respondent”): Joseph R. Birkofer, Legacy Asset Securities, Inc., Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: February 5, 2021.  
Claimant signed the Submission Agreement: February 5, 2021.

Statement of Answer filed on or about: April 14, 2021.  
Respondent signed the Submission Agreement: May 7, 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 2048099 and 2048101 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not request any relief.

At the hearing, Claimant clarified that expungement was his only relief request.

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

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

On March 5, 2021, Claimant and Respondent filed a joint stipulation to have this matter heard by one arbitrator.

On July 20, 2021, Claimant advised that the customers in Occurrence Numbers 2048099 and 2048101 (collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notices"). On July 26, 2021, Claimant filed an Affidavit confirming that the Customers were served with Notices. Claimant also filed copies of the FedEx tracking information available online for the Notices.

The Arbitrator conducted a recorded, telephonic hearing on August 31, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

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 also reviewed the settlement documentation related to Occurrence Numbers 2048099 and 2048101, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimant did not contribute to the settlement amounts.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Statement of Answer; Notices, Affidavit, and FedEx tracking information; Claimant's BrokerCheck® Report; and Claimant's Exhibits 1-5.

### **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:

The Arbitrator recommends the expungement of all references to Occurrence Numbers 2048099 and 2048101 from registration records maintained by the CRD for Claimant Richard E. Kaplan (CRD Number 2944041) with the understanding that, pursuant to Notice

to Members 04-16, Claimant Richard E. Kaplan 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false.

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

The Arbitrator notes that, in September of 2013, WH was hired by Respondent to be a marketing professional. WH did not manage any client accounts. WH left Respondent in June of 2015.

**Occurrence Number 2048099**

Between March 2014 and June 2015, the customers maintained accounts with Respondent and their portfolio did not decline in value. However, the customers had a prior relationship with WH. When WH left Respondent, the customers transferred their accounts from Respondent to a self-directed custodian. Upon opening their accounts with the new custodian, the customers designated WH as their investment advisor. While WH was their investment advisor, the customers engaged in the transactions which were the subject of the customers’ underlying arbitration complaint.

The evidence revealed that Claimant was not responsible for supervising WH, he was not responsible for handling compliance, and he was not involved in the transactions at issue. There were no customer complaints against WH while registered with Respondent. Further, Claimant was a principal for Respondent, but Respondent established and maintained a system for supervising the activities of associated persons that was reasonably designed to achieve compliance with applicable securities laws and regulations.

**Occurrence Number 2048101**

In January of 2013, prior to WH being hired by Respondent, the customers purchased an annuity. Neither Claimant nor Respondent were involved with the sale of the annuity. In early 2014, the customers transferred their accounts to Respondent. Between early 2014 and June 2015, Respondent managed the customers’ portfolio, and the value of the portfolio increased.

In December 2014, WH recommended that the customers purchase a second annuity and capital stock in WH’s company. The money for these transactions came from an

annuity that was not part of the portfolio managed by Respondent. Neither Claimant nor Respondent were involved in the solicitations or had any knowledge of the transactions. Claimant was not WH's supervisor. Further, Claimant was a principal for Respondent, but the evidence revealed that Respondent had established and maintained a system for supervising the activities of its associated persons that was reasonably designed to achieve compliance with applicable securities laws and regulations.

After WH left Respondent, the customers transferred their accounts from Respondent to a self-directed custodian. The customers continued to receive financial advice from WH. In August 2015, August 2016, and September 2016, WH fraudulently executed transactions involving the customers' account. Respondent and Claimant were not involved in these transactions and had no knowledge of the transactions.

### **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

#### **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: May 26, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00

Hearing: August 31, 2021 1 session

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Total Hearing Session Fees = \$ 2,250.00

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**

Sherry R. Wetsch

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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**

***Sherry R. Wetsch***

Sherry R. Wetsch  
Sole Public Arbitrator

**09/08/2021**

Signature Date

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September 08, 2021

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