

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

---

In the Matter of the Arbitration Between:

Claimant  
David Keith Hays

Case Number: 21-00377

vs.

Respondent  
Parkland Securities, LLC

Hearing Site: Indianapolis, Indiana

---

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 David Keith Hays (“Claimant”): Samantha Pastor, Esq. and Dochter Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent Parkland Securities, LLC f/k/a Sammons Securities Company, LLC (“Respondent”): Amir Tadjedin, Esq., Tadjedin Thomas & Engbloom Law Group LLP, Portland, Oregon.

**CASE INFORMATION**

Statement of Claim filed on or about: February 11, 2021.  
Claimant signed the Submission Agreement: February 11, 2021.

Statement of Answer filed on or about: April 16, 2021.  
Respondent signed the Submission Agreement: April 29, 2021.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim alleging that the Form U5 filed by Respondent, as part of registration records maintained by the Central Registration Depository (“CRD”), is defamatory in nature.

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, Claimant requested expungement of the Form U5 filed by Respondent and relevant portions of the related Form U4, an award of damages in the amount of \$1.00, and any other relief as the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested judgment against Claimant dismissing the matter with prejudice; that Respondent's portion of the forum fees be assessed against Claimant; that Respondent be awarded its costs and expenses, including reasonable attorneys' fees incurred in defending this action; and such other and further relief as the Arbitrator deems just and proper.

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

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

On October 21, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On November 2, 2021, Claimant filed a response opposing the Motion to Dismiss. On November 12, 2021, Respondent filed a reply supporting the Motion to Dismiss. On December 21, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. In an Order dated December 21, 2021, the Arbitrator took the Motion to Dismiss under advisement and allowed the filing of optional supplemental briefs or authorities. On December 30, 2021, Respondent filed a Supplemental Brief in Support of the Motion to Dismiss. The same day, Claimant filed Additional Information Regarding the Motion to Dismiss.

Herein, the Arbitrator grants the Motion to Dismiss on the grounds that in April 2013, Claimant's former employer filed a Form U5 citing grounds for Claimant's termination of employment which Claimant now contends was defamatory. Claimant contends that, even though his claim was filed more than six years after April 2013, the claim is timely because he is newly or continuously damaged every day since potential customers can see the allegedly defamatory statement on BrokerCheck®. Claimant further argues that his present damage was unforeseeable because, effective in June 2016, FINRA amended Rule 8312 to require members to provide a link to BrokerCheck® making it more readily available to potential customers. Claimant concedes in his written response, however, that he could have sought expungement beginning in April 2013 when the statement was first made but waited until February 11, 2021 to file a claim for expungement. The fact that potential customers may newly view the statement each day may aggravate the alleged damage from any statement, but the limitations period runs from the first alleged date of damage, not the last. Moreover, FINRA's adoption of new rules which might make BrokerCheck® more readily available to the public also does not create new grounds for a claim, since Claimant concedes that BrokerCheck® reports were publicly available before 2013 and, at all times, thereafter, making it foreseeable that any potential customer could see the allegedly defamatory statement at any time. Moreover, if the damage from the statement was magnified by a Rule change in 2016, Claimant still had until April 2019 to file a claim within the six-year eligibility window of Rule 13206(a) of the Code but failed to act. Claimant does not contend that Respondent itself republished the allegedly defamatory statement after 2013, regardless of whether FINRA has continued to make it available online. As the alleged defamatory statement was published more than six years prior to filing this claim, the claim is ineligible under Rule 13206(a) of the Code and the Motion to Dismiss on eligibility grounds is granted.

Respondent's Motion to Dismiss pursuant to Rule 13206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 13206(b) of the Code.

**AWARD**

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

1. Claimant's claims are dismissed pursuant to Rule 13206 of the Code.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, 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 = \$ 50.00

*\*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 = \$ 150.00

**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:

Two (2) pre-hearing sessions @ \$50.00/session = \$ 100.00  
Pre-Hearing Conferences: June 7, 2021 1 session  
December 21, 2021 1 session

---

Total Hearing Session Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$50.00 of the hearing session fees to Respondent.

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

**ARBITRATOR**

Peter Ordower

-

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 Ordower***

\_\_\_\_\_  
Peter Ordower  
Sole Public Arbitrator

**01/07/2022**

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

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.

January 07, 2022

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