

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Warren H. Gonzales

Case Number: 21-01069

vs.

Respondent
LPL Financial, LLC

Hearing Site: New Orleans, Louisiana

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: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant Warren H. Gonzales: Kristian P. Kraszewski, Esq., Kyros Law, Miami, Florida.

For Respondent LPL Financial, LLC: Ryan R. Baker, Esq., Bass, Berry & Sims PLC, Memphis, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: April 23, 2021.

Warren H. Gonzales signed the Submission Agreement: April 23, 2021.

Statement of Answer filed by Respondent on or about: July 14, 2021.

LPL Financial, LLC signed the Submission Agreement: May 7, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; violation of NASD and NYSE Rules, breach of contract and negligence; negligent supervision; and fraud. The causes of action relate to Claimant's investments in FS Energy and Power, a Business Development Company and Corporate Property Associates 18, a Real Estate Investment Trust.

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 actual damages in the amount of \$50,000.00.

In the Statement of Answer, Respondent requested: that the claims be denied in all respects; that the Arbitrator direct that all costs and assessments by FINRA be borne by Claimant; and that Respondent be awarded its preparation costs, travel expenses, attorneys' fees, expert witness fees, and such other further and general relief to which it may be entitled.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about November 24, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On or about December 23, 2021, Claimant filed a response opposing the Motion to Dismiss. On or about January 11, 2022, Respondent filed a reply in support of its Motion to Dismiss. On February 11, 2022, the Arbitrator heard oral arguments on the Motion to Dismiss. On or about February 14, 2022, the Arbitrator granted the Motion to Dismiss pursuant to Rule 12206 on the following grounds:

Respondent's Motion to Dismiss pursuant to Rule 12206 must be granted. Claimant's Statement of Claim alleged that Respondent's Financial Advisor ("FA") purchased "speculative investments" for Claimant and that Claimant agreed to the purchase based on the FA's representations that the investments would provide guaranteed income and full return of principal at maturity. Claimant's Statement of Claim alleged this was not true and that Claimant later lost money on these investments. Claimant's Statement of Claim does not allege specific dates, but there is no dispute that the alleged transactions occurred on or before May 19, 2014. However, Claimant's Statement of Claim was not filed until April 23, 2021, which is nearly seven years after the alleged representations were made. Suitability of an investment is determined at the time of its purchase. Since the underlying claim was not filed until more than six years from the occurrence or event giving rise to the claim, the claim is not eligible for submission to arbitration under Rule 12206(a) of the Code. Oral argument on Respondent's Motion to Dismiss failed to indicate that amending Claimant's Statement of Claim would specify any actionable occurrence or event arising within six years after May 19, 2014.

Respondent's Motion to Dismiss pursuant to Rule 12206 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 Claimant's claims in court pursuant to Rule 12206(b) of the Code.

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. Claimant's claims as stated in the Statement of Claim are dismissed in their entirety pursuant to Rule 12206 of the Code.

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 = \$ 600.00

**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 = \$ 750.00
Member Process Fee = \$ 1,750.00

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	900.00
Pre-Hearing Conferences: August 18, 2021	1 session	
February 11, 2022	1 session	
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Total Hearing Session Fees	= \$	900.00

The Arbitrator has assessed \$450.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$450.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Lynne M. Gomez

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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

Lynne M. Gomez

Lynne M. Gomez
Sole Public Arbitrator

02/15/2022

Signature Date

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February 16, 2022

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