

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Andy Mark Schwartz

Case Number: 21-01116

vs.

Respondent
LPL Financial LLC

Hearing Site: Jersey City, New Jersey

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 Andy Mark Schwartz: John D. Stewart, Esq., Baritz & Colman LLP, New York, New York.

For Respondent LPL Financial LLC: Jon D. Kaplon, Esq., LPL Financial LLC, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: April 28, 2021.

Andy Mark Schwartz signed the Submission Agreement: April 28, 2021.

Statement of Answer filed by Respondent on or about: July 2, 2021.

LPL Financial LLC did not sign the Submission Agreement.

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 Number 2089772.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the claim, appeared, and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

In the Statement of Claim, Claimant requested to proceed with a single arbitrator in this matter. Claimant also advised that Respondent did not oppose this request.

On September 14, 2021, Claimant advised that the customer in Occurrence Number 2089772 (“Customer”) was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on November 16, 2021, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and did not oppose the request for expungement.

The Customer did not participate in the expungement hearing. The Arbitrator found that the Customer 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 occurrence in the CRD.

The Arbitrator noted that the dispute related to Occurrence Number 2089772 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: the pleadings, Claimant’s testimony, and the hearing exhibits.

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 2089772 from registration records maintained by the CRD for Claimant Andy Mark Schwartz (CRD Number 1317986) with the understanding that, pursuant to Notice to Members 04-16,

Claimant Andy Mark Schwartz 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; and the claim, allegation, or information is false.

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

The Customer received advice from her daughter to purchase a stock and directed Claimant to do so. Claimant had never heard of the stock and did not recommend the purchase. At the time, Claimant reminded the Customer that he and his team do not ordinarily make individual stock purchases but would do this as an accommodation to the Customer. The Customer acknowledged this. The purchase and a necessary liquidation were made, and a confirmation was sent to the Customer. Two months later, the Customer purchased additional shares in the same company. There was no duty on the Claimant's part to actively manage the ownership/value of that stock, and the Customer acknowledged that.

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	= \$ 1,600.00
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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 events giving rise to the dispute. Accordingly, as a party, Respondent LPL Financial LLC is assessed the following:

Member Surcharge	= \$ 2,000.00
Member Process Fee	= \$ 3,850.00

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 @ \$1,150.00/session	= \$	1,150.00
Pre-Hearing Conference: August 16, 2021	1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: November 16, 2021	1 session	
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Total Hearing Session Fees	= \$	2,300.00

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

Patricia Kathleen Costello

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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

Patricia Kathleen Costello

Patricia Kathleen Costello
Sole Public Arbitrator

12/09/2021

Signature Date

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December 10, 2021

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