

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

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In the Matter of the Arbitration Between:

Claimant  
James Roy Kennedy

Case Number: 21-01480

vs.

Respondents  
Dominion Capital Corporation and  
VSR Financial Services, Inc.

Hearing Site: Dallas, 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. Members

**REPRESENTATION OF PARTIES**

For Claimant James Roy Kennedy (“Claimant”): Zachary Morse, Esq. and Dochter Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

Respondent Dominion Capital Corporation (“Dominion”) did not appear.

For Respondent VSR Financial Services, Inc. (“VSR”): David Feldstein, Esq., Cetera Financial Group, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: June 10, 2021.

Claimant signed the Submission Agreement: June 9, 2021.

Dominion did not file a Statement of Answer or sign the Submission Agreement.

Statement of Answer filed by VSR on or about: July 22, 2021.

VSR signed the Submission Agreement: July 22, 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, VSR did not oppose Claimant’s expungement request.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 253467, 1134519, 1311225, 1164457, 1358183, and 1384975 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, VSR requested that all forum costs and fees be assessed against Claimant.

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

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

Dominion did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

On September 15, 2021, Claimant filed a request for a single arbitrator pursuant to Rule 13401(c), to which a response was filed. The Initial Pre-Hearing Conference was held on October 20, 2021, and the Panel addressed Claimant's request for a single arbitrator. In an Order dated October 26, 2021, the Panel granted Claimant's request for a single arbitrator. Accordingly, the case proceeded with the Chairperson as the sole arbitrator.

On January 5, 2022, Claimant filed a Death Record for the customer in Occurrence Number 1164457. On January 10, 2022, Claimant advised that the customers in Occurrence Numbers 253467, 1134519, 1311225, 1358183, and 1384975 (each a "Customer" and collectively, "Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing ("Notice") and that the customer related to Occurrence Number 1164457 could not be served with the Notice because she is deceased. On January 11, 2022, Claimant filed FedEx proof of delivery confirming that the Customers were served with the Notice.

On January 18, 2022, the Customer in Occurrence Number 1384975 filed an opposition to the request for expungement.

The Arbitrator conducted a recorded, telephonic hearing February 7, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Neither Dominion nor VSR participated in the expungement hearing.

The Customers also 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 253467, 1311225, 1164457, and 1384975, 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 was required by his employer to contribute to the settlement amounts.

The Arbitrator noted that the disputes related to Occurrence Numbers 1134519 and 1358183 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Exhibits 1 through 20 and Claimant's testimony.

### **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 Numbers 253467, 1134519, 1311225, 1164457, 1358183, and 1384975 from registration records maintained by the CRD for Claimant James R. Kennedy (CRD Number 1961588) with the understanding that, pursuant to Notice to Members 04-16, Claimant James R. Kennedy 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, 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:

#### **Occurrence Number 253467**

The Customer was an unsolicited investor; he was a relative of one of Claimant's clients. Despite Claimant's recommendation to diversify, the Customer insisted on placing 100% of his funds from a maturing CD into a single high-yield promissory note. Claimant testified that he presented and discussed the prospectus and the high risks of the promissory note with the Customer prior to the purchase in late 1995. After the promissory note purchase, Claimant continued to advise the Customer to diversify his portfolio. Due to unforeseen market conditions, the value of the promissory note declined dramatically. The Customer filed a complaint alleging misrepresentation and unsuitability. The complaint evolved into arbitration with NASD (n/k/a FINRA). In the Customer's arbitration, the Customer sought damages of \$64,000.00. For the purpose of avoiding the expense and uncertainty of arbitration, Claimant's employer executed a settlement with the Customer in the amount of \$14,999.00. Claimant was required by Claimant's employer to contribute the entire amount

of the settlement. The Arbitrator found that Customer's allegations of unsuitability to be false and clearly erroneous because Claimant, on many occasions, counseled the Customer to diversify and advised against investing into one, unsolicited high-risk investment. The Arbitrator, in finding that the claim meets the standards of FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) is recommending expungement of Occurrence Number 253467.

#### Occurrence Numbers 1134519 and 1311225

The Customer, a married couple, requested financial planning and budgeting from Claimant after attending Claimant's financial seminar. Claimant, upon obtaining the Customer's investment profile and objectives, created a financial plan for the Customer. The financial plan recommended a balanced, diversified portfolio including mutual funds, equities and annuities. Claimant explained, in detail, the terms, risks, costs, fees and the pros and cons of his recommendations to the Customer. The financial plan was designed for a long-term investment time horizon. Within a matter of months of initiating the long-term plan, the Customer began taking large withdrawals despite Claimant's counseling to reduce expenses. Due to market instability in 2002 and the Customer's excessive spending, the value of the Customer's portfolio declined. Communication between Claimant and Customer ceased. In January 2003, the Customer filed a complaint alleging unsuitability. After Claimant's employer completed a thorough investigation, the claim was denied. The dispute was reported as Occurrence Number 1134519. In June 2006, the Customer filed a second complaint alleging unsuitability and sought \$200,000 in damages. The Claimant's employer executed a settlement with the Customer in the amount of \$55,000.00. The Claimant was required by Claimant's employer to contribute \$5,000.00. The Arbitrator found that Customer's allegations of unsuitability to be false and clearly erroneous because Claimant had a reasonable basis to believe that the investments in the Customer's portfolio to be suitable and to be based upon the Customer's investor profile with the investment objective of growth. Claimant repeatedly advised the Customer to reduce spending and adhere to the long-term plan. The Arbitrator, in finding that the claim meets the standards of FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) is recommending expungement of Occurrence Numbers 1134519 and 1311225.

#### Occurrence Number 1164457

In December 1999, the Customer, an experienced investor that was nearing retirement, became a client of Claimant after attending one of his financial planning seminars. Claimant completed the Customer's investor profile and investment objectives which were growth with a moderate to low risk tolerance. Because the Customer's existing portfolio was overly concentrated in one equity, Claimant recommended a variety of diverse investments as part of a balanced and diversified portfolio. Claimant explained the terms, risks, costs, fees, advantages, and disadvantages of his recommendations. Contrary to earlier discussions regarding risk profiles with Claimant, the Customer completed and signed various risk profile questionnaires and account forms which stated her investment objectives as growth with a moderate to high risk tolerance. Due to the decline in the technology sector in March 2000, the Customer's portfolio declined. Despite Claimant's recommendations to diversify into more conservative investments, the Customer continued to pursue a high concentration of aggressive growth investments. In August 2004, the Customer filed a claim alleging unsuitability. Claimant's employer executed a settlement with the Customer in the amount of \$97,500.00. Claimant was required by Claimant's employer to contribute \$5,000.00. The Arbitrator found that Customer's allegations of unsuitability to be false and clearly erroneous because Claimant repeatedly warned the Customer to diversify with more conservative

investments. The Customer insisted on purchasing a high concentration of aggressive growth investments; the Customer rejected Claimant's more conservative investment recommendations. The Arbitrator, in finding that the claim meets the standards of FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) is recommending expungement of Occurrence Number 1164457.

Occurrence Number 1358183

The Customer, a married couple, requested retirement planning advice from Claimant after attending Claimant's financial seminar. A diversified portfolio was created for the Customer after Claimant ascertained the Customer's financial profile, investment objectives and risk tolerances. The Customer did not express any dissatisfaction with the portfolio for over 8 years. The Customer filed a claim in 2007 alleging poor service and unsuitability. The claim was not pursued in an arbitration or court. The claim is recorded on Claimant's BrokerCheck® Report as "Closed". The Arbitrator found that Customer's allegations of poor service to be false and clearly erroneous because Claimant provided excellent service to the Customer at all times. The Arbitrator found that the Customer's allegations of unsuitability to be false and clearly erroneous because the investment recommendations were based upon Claimant's due diligence and were congruent with the Customer's investment objectives. The Arbitrator, in finding that the claim meets the standards of FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) is recommending expungement of Occurrence Number 1358183.

Occurrence Number 1384975

In June 2002, the Customer, a retiree and an experienced investor, became a client of Claimant after attending one of his financial planning seminars. Based upon the Customer's investor profile and investment objectives, Claimant recommended a variety of diverse investments. The Customer signed disclosure documents which affirmed her understanding of the terms, risks, costs, fees, features and benefits of the investment portfolio recommended by Claimant. The Customer began to make excessive withdrawals by liquidating certain investments. The Customer initiated a portfolio transfer to another brokerage in 2007. In 2008, the Customer filed a claim alleging unsuitability. Claimant's employer executed a settlement with the Customer in the amount of \$7,500.00. Claimant was required by Claimant's employer to contribute \$3,750.00. The Arbitrator found that Customer's allegations of unsuitability to be false and clearly erroneous because Claimant had a reasonable basis to believe that the recommended investments were suitable. The investment recommendations were based upon an investor profile and the Customer's investment objectives. The Arbitrator, in finding that the claim meets the standards of FINRA Rule 2080(b)(1)(A) and FINRA Rule 2080(b)(1)(C) is recommending expungement of Occurrence Number 1384975.

2. 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:

Initial Claim Filing Fee = \$ 1,600.00

*\*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 parties, Dominion and VSR are each 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 Panel @ \$1,150.00/session	= \$ 1,150.00
Pre-Hearing Conference: October 20, 2021 1 session	
One (1) hearing session on expungement request @ \$1,150.00/session	= \$ 1,150.00
Hearing: February 7, 2022 1 session	
<hr/> Total Hearing Session Fees	<hr/> = \$ 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**

David A. Schuler

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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**

***David A. Schuler***

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David A. Schuler  
Sole Public Arbitrator

**02/25/2022**

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

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February 25, 2022

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