Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
James Edward Dy

vs.

Respondent
LPL Financial LLC

Case Number: 21-01636

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

REPRESENTATION OF PARTIES

For Claimant James Edward Dy: Dochtor Kennedy, MBA, J.D., and Ben Winograd, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent LPL Financial LLC: Eleonora Yonge, Esq., LPL Financial LLC, San Diego, California.

CASE INFORMATION

Statement of Claim filed on or about: June 28, 2021.
James Edward Dy signed the Submission Agreement: June 28, 2021.

Statement of Answer filed by Respondent on or about: August 17, 2021.
LPL Financial LLC signed the Submission Agreement: July 14, 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 did not oppose Claimant’s expungement request.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested expungement of Occurrence Number 2107409 and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not set forth a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 27, 2021, the parties filed a joint stipulation advising FINRA Dispute Resolution Services of their agreement to proceed with a single arbitrator in this matter.

On November 30, 2021, Claimant advised that the customer in Occurrence Number 2107409 ("Customer") was served with the Statement of Claim and notice of the date and time of the expungement hearing. On December 6, 2021, Claimant filed an Affidavit confirming that the Customer was served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded telephonic hearing on February 15, 2022, 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 also reviewed the settlement documentation related to Occurrence Number 2107409, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request and that Claimant did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: 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 2107409 from registration records maintained by the CRD for Claimant James Edward Dy (CRD Number 2877282) with the understanding that, pursuant to Notice to Members 04-16, Claimant James Edward Dy 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:

> At the evidentiary hearing, Claimant testified that he has been a financial services professional since 1997 and holds 6 designations. Claimant has been registered with Respondent since 2008. His BrokerCheck® Report, which is in evidence, lists one customer dispute which is the subject of this expungement request.
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> The Customers are husband and wife. Accredited investors, they became Claimant's clients in late 2008 through an existing-client referral. Having lost money in 2008, Claimant testified that the couple, concerned about market volatility, believed that they may have invested their portfolio too aggressively. They sought another advisor for a "second opinion," as Claimant testified. That advisor was Claimant.
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> Claimant testified that he met the couple face-to-face in an in-office meeting. At the meeting, he testified that he reviewed their statements and bank records and got a "clear idea" of their financial situation. The couple had invested 80% of their portfolio in stocks. According to the Statement of Claim, the couple had an investment time horizon of more than ten (10) years.
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> Claimant testified that he began managing the couple's portfolio in 2009. He testified that he made a recommendation tailored to all their assets, regardless of whether Respondent managed them. According to the documentary evidence, the portfolio contained municipal bonds, trust assets, annuities and mutual funds from 2009 through December 2020.
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> Claimant testified that there came a time when the couple received an inheritance which almost doubled their net worth. Claimant explained that the inheritance included a parcel of real estate, which the couple eventually moved into, deciding to rent their prior residence, potentially earning more income. Claimant testified that he recommended consolidating management of the investments and reconfiguring the decedent's portfolio to the couple's investment goals and objectives. He testified that he changed the broker records and moved to a new asset allocation model consistent with the couple's risk tolerance and time horizon. The couple's investment objective was "[g]rowth with [i]ncome", as stated in their Account Application of November 2011 in evidence.
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> In 2013, the couple sought high income that was not correlated to the markets. That's when Claimant recommended Franklin Square Investment Corporation II ("Franklin Square"), a business development company. Franklin Square was an illiquid, alternative investment. Claimant testified that he explained the risks, costs, fees, advantages, and

disadvantages of such an investment. It was not publicly traded, was earning a dividend of 7.2%, which, as Claimant testified, was “very appealing” to the couple. Claimant testified that he recommended that the couple invest “not a lot”, perhaps 5% of their portfolio. According to Claimant, the couple did not have liquidity needs for those funds.

The rationale for Claimant’s recommendation to the couple is documented on various exhibits in evidence, particularly on Page 5 of the October 16, 2013 Alternative Investment Purchase form. Claimant testified that his recommendation was based on the couple’s desire for consistent income which would not be correlated to day-to-day market fluctuations in the context of a well-diversified portfolio. Claimant testified that this investment was “absolutely suitable” for the couple.

Claimant met with the couple, provided them with the investment prospectus, a fact sheet, offered to answer their questions, and gave them time to consider whether to so invest. He also testified that he provided risk disclosure documents and explained the pros and cons relating to investing in a non-public, alternative investment. Claimant testified that the couple understood that the shares would not be liquid. Claimant testified that the couple “loved the idea”. The couple followed Claimant’s recommendation and purchased $50,000 of Franklin Square in October 2013. In conjunction with the purchase, the couple signed the Subscription Agreement in evidence and disclosure documents as well as Respondent’s Alternative Investment Purchase form, also in evidence. At the time of purchase, the $50,000 investment represented under 5% of the couple’s portfolio.

Claimant testified that the investment performed as expected. From December 2013 through June 2020, Franklin Square provided dividends. A document listing total dividends through October 2, 2020 was admitted into evidence. The couple received more than $24,000.00 in dividends, which represents approximately half of their initial investment of $50,000.00.

There came a time when an unsolicited tender offer caused the value of the investment to go down. In addition, Franklin Square merged with other business development companies to form FS KKR Capital Corp. II (“FS KKR”). There was a reverse stock split and an initial public offering which caused its value to decline. The couple did not complain to Claimant about the decline. Claimant testified that when FS KKR went public, he recommended to the couple that they hold onto it. Instead, they transferred their portfolio away from Claimant.

Respondent undertook an investigation of the matter. According to the Statement of Answer, the purchase of the investment was within Respondent’s concentration guidelines, considered the couple’s desires as expressed in various communications, and consistent with the couple’s stated investment objectives.

In December 2020, the Customer husband commenced a FINRA arbitration against Respondent alleging that Claimant made an “unsuitable alternative investment recommendation.” Claimant was not named as a Respondent but was named in the Statement of Claim. Claimant testified that the allegation is “false” and negatively affects his business. The Customer husband sought $35,000.00 in compensatory damages and ultimately settled for $12,000.00 in April 2021. Claimant testified that he was not involved in the settlement negotiations and did not contribute toward the settlement. Claimant’s

testimony is supported by the settlement agreement in evidence. According to Respondent's Statement of Answer, the settlement was a business decision to avoid the expense of an evidentiary hearing.

The Arbitrator found that a preponderance of the evidence shows that the allegation made by the Customer in the underlying FINRA arbitration is clearly erroneous and false. There is no evidence that Claimant made an unsuitable alternative investment recommendation under the circumstances of this case. Claimant's hearing testimony is credible. The record is well-documented and contains no contradictory evidence. The Arbitrator concluded that the Customer's allegations were clearly erroneous and false within the meaning of FINRA Rule 2080(b)(1)(A) & (C). As such, the Arbitrator found that the customer dispute information has no meaningful investor protection or regulatory value. For these reasons, the Arbitrator recommends expungement of any reference to the underlying FINRA arbitration from Claimant's BrokerCheck® Report .

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 that employed the associated person at the time of the event 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:	November 3, 2021	1 session	
One (1) hearing session on expungement request @ $1,150.00/session			=$ 1,150.00
Hearing:	February 15, 2022	1 session	
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

Annamaria Boccia Smith - 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

Annamaria Boccia Smith	**03/08/2022**
Annamaria Boccia Smith Sole Public Arbitrator	Signature Date

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March 08, 2022
Date of Service (For FINRA Dispute Resolution Services use only)