

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

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In the Matter of the Arbitration Between:

Claimant  
Mark Kim Gaskill

Case Number: 21-01738

vs.

Respondent  
MKG Financial Group, Inc.

Hearing Site: Portland, Oregon

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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. Member

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Mark Kim Gaskill (“Claimant”): Zachary Morse, Esq., AdvisorLaw LLC, Westminster, Colorado.

For Respondent MKG Financial Group, Inc. (“Respondent”): Mark K. Gaskill, MKG Financial Group, Inc., Portland, Oregon.

**CASE INFORMATION**

Statement of Claim filed on or about: July 8, 2021.  
Claimant signed the Submission Agreement: July 8, 2021.

Statement of Answer filed by Respondent on or about: July 17, 2021.  
Respondent 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 took no position on Claimant’s expungement.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Numbers 54732, 54734, 54736, 117181 and 189034 from his CRD records, pursuant to FINRA Rule 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous;
2. Expungement of Occurrence Numbers 54732, 54734, 54736, 117181 and 189034 from his CRD records, pursuant to FINRA Rule 2080(b)(1)(B), as Claimant was not involved in the alleged investment-related sale practice violation, forgery, theft, misappropriation, or conversion of funds;
3. Expungement of Occurrence Numbers 54732, 54734, 54736, 117181 and 189034 from his CRD records, pursuant to FINRA Rule 2080(b)(1)(C), as the claim, allegation, or information is false;
4. Deletion of all Disclosure Reporting Pages accompanying Occurrence Numbers 54732, 54734, 54736, 117181 and 189034; and
5. 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.

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 and appeared at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On July 26, 2021, the parties agreed to proceed with a single arbitrator on this matter.

On November 30, 2021, Claimant filed an affidavit which included obituaries and the death records from Lexis Nexis database reflecting that customer in Occurrence Number 54734 ("Mr. G"), customer in Occurrence Number 54736 ("Mr. M") and customer in Occurrence Number 117181 ("Dr. NK") are deceased and therefore Claimant was unable to serve the Statement of Claim and notice of the date and time of the expungement hearing. In the affidavit, Claimant stated that despite diligent efforts, he was unable to obtain information needed to serve the customer in Occurrence Number 189034 ("Ms. J") with the Statement of Claim and notice of the date and time of the expungement hearing. Claimant also advised that Ms. J's information, including the last known address, was not in his possession and Respondent was unable to provide any information to assist with the research. Claimant further advised that he has exhausted all avenues from which to obtain information needed to serve Ms. J. The Arbitrator found sufficient efforts had been made to serve Ms. J.

On December 6, 2021, Claimant filed an affidavit confirming that the customers in Occurrence Numbers 54732 ("Mr. A"), 54736 ("Ms. M") and 117181 ("Dr. WK") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

Hereinafter, Mr. A, Mr. G, Mr. M., Ms. M, Dr. NK, Dr. WK and Ms. J are collectively referred to as the "Customers".

The Arbitrator conducted a recorded hearing by videoconference on January 27, 2022, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customers also did not participate in the expungement hearing. The Arbitrator found that Mr. A, Ms. M and Dr. WK 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 was unable to review the settlement documentation related to Occurrence Numbers 54732, 54734, 54736, 117181 and 189034. The Arbitrator noted that, upon diligent search, the settlement documents could not be produced due to the length of time since the settlement occurred. Having reviewed Claimant's BrokerCheck® Report and heard testimony at the hearing, the Arbitrator considered the amounts of payment made in the settlement and noted that Claimant contributed a nominal amount in only one instance, Occurrence Number 54732. Arbitrator noted that expungement is still appropriate as Claimant contributed to the settlement to minimize the costs involved in defending himself and avoid litigation costs. The Arbitrator also noted that the date of the settlement preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: pleadings; Claimant's BrokerCheck® Report; 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 54732, 54734, 54736, 117181 and 189034 from registration records maintained by the CRD for Mark Kim Gaskill (CRD Number 848103) with the understanding that, pursuant to Notice to Members 04-16, Mark Kim Gaskill 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.

The claim, allegation, or information is false.

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

After considering the pleadings, testimony and evidence presented at the expungement hearing, the Arbitrator recommends the expungement of Occurrence Numbers 54732, 54734, 54736, 117181 and 189034, from registration records for Claimant.

The claims and allegations are false or clearly erroneous. All the claims arise from the Customers' purchases of preferred stock of Memorex Telex, and/or Fannie Mae bonds, shortly before the early 1990s recession. The Customers initiated most, and all were thought to be conservative and "safe." The bonds declined but recovered. The stock became worthless. The transactions were suitable at the time. The accounts were not discretionary. Claimant's advice was consistent with the Customers' directions. The claims are hindsight.

In addition, the securities at issue were publicly traded at normal commissions or mark ups. Claimant made a good faith effort to locate the Customers' records but they are not available due to the passage of time (approximately 30 years), changes in ownership of Claimant's then-employer Lehman Bros., and expiration of document retention periods. While the Customers' records are no longer available, the Arbitrator found Claimant's testimony credible, consistent and forthright. Claimant had a reasonable explanation for not seeking expungement earlier – the complaints had not been an issue in his business until the last several years and are now an impediment to expanding his client base and obtaining insurance. Claimant has had no subsequent customer complaints. While most of the complaining customers are now deceased, the remaining three customers chose not to participate despite being served with Statement of Claim and notice of the expungement hearing. Taking the record as a whole, the Arbitrator finds the claims are clearly erroneous or false and recommends each be expunged.

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
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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(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	= \$	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: October 25, 2021	1 session	

One (1) hearing session on expungement request @ \$1,150.00/session	= \$	1,150.00
Hearing: January 27, 2022	1 session	

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Total Hearing Session Fees	= \$	2,300.00
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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**

James E. Bartels

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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**

***James E. Bartels***

James E. Bartels  
Sole Public Arbitrator

**02/21/2022**

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.

February 28, 2022

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