

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Patrick Hatch

Case Number: 21-02059

vs.

Respondent
LPL Financial LLC

Hearing Site: Los Angeles, California

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 Michael Patrick Hatch: N. Nancy Ghabai, Esq., Ghabai Law Group LLC, Boston, Massachusetts.

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

CASE INFORMATION

Statement of Claim filed on or about: August 10, 2021.
Claimant signed the Submission Agreement: August 10, 2021.

Statement of Answer filed by Respondent on or about: September 29, 2021.
Respondent signed the Submission Agreement: September 29, 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 the expungement.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 2079064 from his CRD records and public

- BrokerCheck® report pursuant to FINRA Rule 2080(b)(1)(A) and/or Rule 2080(b)(1)(C) because the allegations are clearly erroneous, factually impossible, and false;
2. Compensatory damages of \$1.00; and
 3. 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.

At the hearing, Claimant withdrew its request for \$1.00 in compensatory damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 30, 2021, the parties agreed to proceed with a single arbitrator for this matter.

On December 17, 2021, Claimant advised that the customer in Occurrence Number 2079064 (“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 January 26, 2022, so the parties could present oral argument and evidence on Claimant’s request for expungement.

Respondent participated in the expungement hearing and as stated in the Statement of Answer, 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 has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 2079064, 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 request for expungement and that Claimant contributed to the settlement amount. However, Arbitrator noted that expungement is still appropriate as the settlement solely consisted of the repurchase of the investment at issue from the Customer at current net asset value, to resolve a lack of transferability and illiquidity of the investment. Claimant made a business decision to avoid the potential cost and uncertainty of litigation.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant’s Statement of Claim; Claimant’s BrokerCheck® Report; Claimant’s hearing exhibits; 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 Number 2079064 from registration records maintained by the CRD for Claimant Michael Patrick Hatch (CRD Number 1968086) with the understanding that, pursuant to Notice to Members 04-16, Claimant Michael Patrick Hatch 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.

The claim, allegation, or information is false.

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

In Occurrence Number 2079064, the Customer’s claim of unsuitability in connection with a single investment in his diversified portfolio relating to a closed-end fixed income fund (FS Global Credit Opportunities Fund – “FSGCO”) is clearly erroneous and false. Evidence shows that the investment was suitable for the Customer’s portfolio given the stated investment objectives, risk tolerance, and time horizon. Moreover, there were no investment losses associated with either the overall portfolio, or the specific closed-end fund at issue which constituted only a portion of the portfolio.

The Customer’s investment decisions were informed by conversations, correspondence and documents exchanged with Claimant. The transaction at issue was disclosed and documented. The Customer received the FSGCO prospectus and signed the product disclosure form, which indicated the investment horizon, liquidity, risk, and objectives. The Customer was experienced in outside investments with similar liquidity constraints, e.g., annuities.

Respondent conducted a thorough review of the Customer’s allegations and denied the claim. To resolve the matter, Claimant (with Structured Assignments) agreed to repurchase the Customer’s outstanding shares of FSGCO at their net asset value at the date of the settlement. Per the BrokerCheck® Report, as a result of the repurchase, the net gain on the investment received by the Customer was approximately 54%. None of the payments to the Customer was for damages. The issue resolved by the settlement was the illiquidity of the investment, not its performance or suitability.

Claimant followed and performed his duties as a representative in an ethical and professional manner, exercised reasonable diligence in ascertaining suitability of

investments, and acted in the best interests in furtherance of the financial objectives of the Customer in the referenced occurrence.

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 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: November 22, 2021 1 session

One (1) hearing session on expungement request @ \$1,150.00/session = \$ 1,150.00
Hearing: January 26, 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

Erik R. Siering

-

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

Erik R. Siering

Erik R. Siering
Sole Public Arbitrator

01/31/2022

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.

January 31, 2022

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