

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants  
James E. Bashaw and  
Jeb & Co.

Case Number: 16-01339

vs.

Respondents  
LPL Financial, LLC and  
Mark S. Casady

Hearing Site: Houston, Texas

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Nature of the Dispute: Associated Person and Non-Member vs. Member and  
Associated Person

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimants James E. Bashaw ("Bashaw") and Jeb & Co. ("JebCo"), hereinafter collectively referred to as "Claimants": David B. Cosgrove, Esq., Cosgrove Law Group, LLC, St. Louis, Missouri.

For Respondents LPL Financial, LLC ("LPL") and Mark S. Casady ("Casady"), hereinafter collectively referred to as "Respondents": Rodney Acker, Esq., Norton Rose Fulbright US, LLP, Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: May 10, 2016.  
Claimants signed the Submission Agreement: May 9, 2016.  
Amended Statement of Claim filed on or about: August 21, 2017.

Statement of Answer filed jointly by Respondents on or about: August 10, 2016.  
LPL signed the Submission Agreement: August 10, 2016.  
Casady signed the Submission Agreement: August 10, 2016.

**CASE SUMMARY**

Claimants asserted the following causes of action: raiding, breach of fiduciary duty, tortious interference with business relationships, false light, defamation per se, negligent misrepresentation, and intentional infliction of emotional distress. Claimants alleged LPL commenced an audit of Bashaw in furtherance of its plan to raid JebCo's employees, steal Bashaw's clients, and to destroy his career.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Amended Statement of Claim, Claimants requested:

Compensatory Damages (in excess of)	\$30,000,000.00
Punitive Damages	Unspecified
Attorneys' Fees	Unspecified
Interest	Unspecified
Costs	Unspecified
Other Monetary Relief	Unspecified
Other Non-Monetary Relief	Expungement

In the Statement of Answer, Respondents requested that the Panel dismiss Claimants' claims in their entirety and award Respondents reasonable attorneys' fees as the prevailing party in this proceeding subject to its written agreements with Claimants and to the extent such recovery may also be permitted under relevant law.

At the close of the hearing, Claimants' damage request was a range of \$16,000,000.00 to \$24,000,000.00.

**OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about September 15, 2016, Claimants filed a Rule 13510 Motion for Authority for Each Party to Conduct Three (3) Five (5) Hour Depositions ("Motion for Depositions"). On or about September 29, 2016, Respondents filed a Response to Claimants' Motion for Depositions. On or about October 3, 2016, Claimants filed a Reply in Support of the Motion for Depositions. On or about October 7, 2016, Respondents filed a Sur-Reply to the Motion for Depositions. During the Initial Pre-Hearing Call ("IPHC") on October 18, 2016, the Panel heard oral arguments on the Motion for Depositions. In its IPHC Order dated October 18, 2017, the Panel denied Claimants' Motion for Depositions.

On or about July 7, 2017, Claimants filed a Rule 13702 Motion to Withdraw Claims against Respondent Casady Without Prejudice. On or about July 12, 2017, Claimants filed Notice of Withdrawal of Rule 13702 Motion to Withdraw Claims against Respondent Casady Without Prejudice.

On or about August 9, 2017, Claimants filed a Motion in Limine. The Panel advised that it would address this motion during the hearing on August 14, 2017, at which the Panel denied the Claimants' Motion in Limine.

At the final hearing, the Panel confirmed on the record that the court reporter is the official record of the hearing.

At the final hearing, after Claimants' case-in-chief, LPL and Casady made an oral Motion to Dismiss. Claimants orally opposed the Motion to Dismiss. The Panel granted Casady's Motion to Dismiss and denied LPL's Motion to Dismiss. The Panel determined that Claimants did not meet their burden of proof with respect to Counts I-VII for Casady in his individual capacity. At the close of the evidence, LPL renewed its oral Motion to Dismiss. The Panel denied LPL's renewed Motion to Dismiss.

On or about August 20, 2017, Claimant filed a Motion for Sanctions and Motion for Leave to File First Amended Statement of Claim. The Panel addressed these motions during the hearing on August 21, 2017. The Panel deferred its ruling on the Motion for Sanctions. The Panel granted the Motion for Leave to Amend the Statement of Claim with respect to clarifying the corporate history of Claimant JebCo and to clarify facts regarding the State of Texas's investigation and denied the motion with respect to adding claims under Racketeer Influenced and Corrupt Organizations Act.

On or about September 4, 2017, Claimants filed a Motion in Limine to Exclude or Limit the Testimony of Respondents' Expert Witness regarding Damages ("Second Motion in Limine") and Supplemental Motion for Sanctions. The Panel addressed these motions during the hearing on September 5, 2017. The Panel granted Claimants' Second Motion in Limine with respect to providing a damage calculation not previously produced by the 20-day exchange, for which no good cause was shown. The Panel deferred its ruling on the Supplemental Motion for Sanctions.

At the close of the hearing, the Panel granted the parties' requests to file post-hearing submissions. On or about September 8, 2017, Claimants filed an Affidavit of Costs. On or about September 14, 2017, Respondents filed an Affidavit of Costs and Fees. The parties' post-hearing submissions were sent to the Panel for consideration.

The parties present at the hearing have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. Claimants' Motion for Sanctions is granted. Respondent LPL Financial, LLC failed to produce documents in accordance with a previous Order and did not show good cause for failing to produce documents as ordered. Respondent LPL Financial, LLC is liable for and shall pay to Claimants James E. Bashaw and Jeb & Co. the sum of \$25,000.00 in attorneys' fees.
3. Other than forum fees, which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.

4. Any and all claims for relief not specifically addressed herein, including expungement and punitive damages, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 2,250.00

*\*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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, LPL Financial, LLC is assessed the following:

Member Surcharge = \$ 4,025.00  
Member Process Fee = \$ 7,000.00

#### **Discovery-Related Motion Fee**

Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers  
with one (1) arbitrator @ \$200.00/decision = \$400.00  
Claimants submitted one (1) discovery-related motion  
Respondents submitted one (1) discovery-related motion  
Total Discovery-Related Motion Fees = \$400.00

The Panel has assessed \$250.00 of the discovery-related motion fees jointly and severally to Claimants James E. Bashaw and Jeb & Co.

The Panel has assessed \$150.00 of the discovery-related motion fees to Respondent LPL Financial, LLC.

#### **Contested Motion for Issuance of Subpoena Fee**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena  
with one arbitrator @ \$250.00 = \$250.00  
Total Contested Motion for Issuance of Subpoena Fee = \$250.00

The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees to Claimants James E. Bashaw and Jeb & Co.

The Panel has assessed \$125.00 of the contested motion for issuance of subpoenas fees to Respondent LPL Financial, LLC.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 1,800.00
Pre-hearing conferences: May 26, 2017	1 session
July 14, 2017	1 session
July 26, 2017	1 session
August 1, 2017	1 session
Two (2) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$ 3,000.00
Pre-hearing conferences: October 18, 2016	1 session
August 30, 2017	1 session
Twenty Seven (27) hearing sessions @ \$1,500.00/session	= \$40,500.00
Hearing Dates: August 14, 2017	2 sessions
August 15, 2017	3 sessions
August 16, 2017	2 sessions
August 17, 2017	3 sessions
August 18, 2017	2 sessions
August 21, 2017	2 sessions
August 22, 2017	2 sessions
August 23, 2017	3 sessions
August 24, 2017	1 session
September 5, 2017	2 sessions
September 6, 2017	2 sessions
September 7, 2017	1 session
September 8, 2017	2 sessions
<hr/> Total Hearing Session Fees	<hr/> = \$45,300.00

The Panel has assessed \$2,400.00 of the hearing session fees jointly and severally to Claimants James E. Bashaw and Jeb & Co.

The Panel has assessed \$42,900.00 of the hearing session fees to Respondent LPL Financial, LLC.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Brian James Tagtmeier	-	Public Arbitrator, Presiding Chairperson
Alan M. Holzberg	-	Public Arbitrator
Peter Benz Dickens	-	Non-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.

**Concurring Arbitrator's Signature**

/s/ Brian James Tagtmeier  
Brian James Tagtmeier  
Public Arbitrator, Presiding Chairperson

October 24, 2017  
Signature Date

**Concurring in part / Dissenting in part Arbitrator's Signature**

Concurring as to the Panel's decision on the Motion for Sanctions;  
Dissenting as to the Panel's decision on the merits

/s/ Alan M. Holzberg  
Alan M. Holzberg  
Public Arbitrator

October 17, 2017  
Signature Date

**Concurring in part / Dissenting in part Arbitrator's Signature**

Concurring as to the Panel's decision on the merits;  
Dissenting as to the Panel's decision on the Motion for Sanctions

/s/ Peter Benz Dickens  
Peter Benz Dickens  
Non-Public Arbitrator

October 17, 2017  
Signature Date

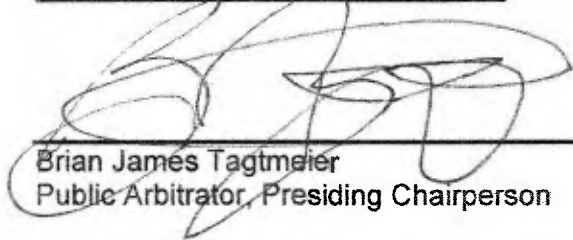
October 24, 2017  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

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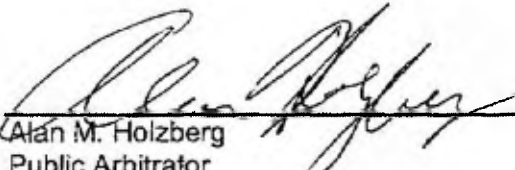
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Non-Public Arbitrator

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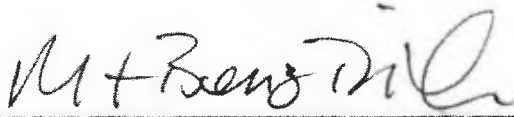
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