In the Matter of the Arbitration Between:

Claimants
James Living Trust, Geraldine H. James, TTEE
Geraldine H. James
Janet L. Paduhovich
PTC CUST Roth IRA FBO Janet L. Paduhovich
Janet L. Paduhovich, Outside Investments-Retirement

vs.

Respondent
LPL Financial LLC

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants James Living Trust, Geraldine H. James, TTEE and Geraldine H. James, hereinafter collectively referred to as the “James Claimants”, and Janet L. Paduhovich, PTC CUST Roth IRA FBO Janet L. Paduhovich, and Janet L. Paduhovich, Outside Investments-Retirement, hereinafter collectively referred to as the “Paduhovich Claimants”: David M. Gaba, Esq., Compass Law Group PS, Inc., Seattle, Washington; and Patricia L. Vannoy, Esq., Mattson Ricketts Law Firm, Lincoln, Nebraska.


CASE INFORMATION

Statement of Claim filed on or about: June 1, 2015.
Amended Statement of Claim filed on or about: March 17, 2016.
James Claimants signed the Submission Agreement: March 1, 2015.

Statement of Answer to Statement of Claim filed by Respondent on or about: September 17, 2015.
Amended Answer to Amended Statement of Claim filed by Respondent on or about: April 12, 2016.
Respondent signed the Submission Agreement: July 14, 2015.
CASE SUMMARY

In the Statement of Claim, the Paduhovich Claimants and James Claimants asserted the following causes of action: violation of securities regulatory requirements; breach of fiduciary duties; violation of the Washington State Securities Act and the Utah Uniform Securities Act; negligence; negligent supervision; violation of the Washington Consumer Protection Act; liability for agent’s actions; and liability as control person of Mr. Fackrell.

The Amended Statement of Claim removed the Paduhovich Claimants as parties to the case and asserted the following causes of action: violation of securities regulatory requirements; breach of fiduciary duties; violation of the Utah Uniform Securities Act and the North Carolina Securities Act; negligence; negligent misrepresentation; negligent supervision; negligent retention; fraudulent misrepresentation and concealment; liability for agent’s actions; liability as control person of Mr. Fackrell; and breach of contract. The causes of action relate to the James Claimants’ accounts consisting of investments in alleged volatile, high risk investments and in a variable annuity.

Unless specifically admitted in its Answer to the Statement of Claim, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Amended Answer to the Amended Statement of Claim, Respondent denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, the Paduhovich Claimants and James Claimants requested:
1. Actual and rescissionary damages for losses to their investments;
2. Exemplary damages;
3. Pre-award and post-award interest at 12% as provided by the Washington Consumer Protection Act, or such other rate set by the Arbitrators;
4. Consideration paid for the securities, together with interest at 12% per year from the date of payment, costs, and reasonable attorneys’ fees, less the amount of income received on the security under the Utah Uniform Securities Act, Utah Code Ann. §61-1-22(1)(b);
5. Three times the consideration paid for the securities, together with interest, costs, and attorneys’ fees under the Utah Uniform Securities Act, Utah Code Ann. §61-1-22(2);
6. Punitive damages;
7. Attorneys’ fees, expenses and costs as provided by contract, statutes, FINRA rules, equity, the Washington Consumer Protection Act, the Utah Uniform Securities Act, or any other ground recognized by the Arbitrators;
8. Punitive treble damages as provided by the Washington Consumer Protection Act, or any other ground recognized by the Arbitrators;
9. Monetary amount necessary to compensate for the additional income taxes they will owe on any award;
10. All hearing and filing fees; and
11. Such other relief as the Arbitrators deem just and proper.
In the Amended Statement of Claim, the James Claimants requested:
1. Actual and rescissionary damages for losses to their investments;
2. Pre-award and post-award interest at 8% under N.C. Gen. Stat. § 24-1, or such other rate set by the Arbitrators;
3. Consideration paid for the securities, together with interest at 12% per year from the date of payment, costs, and reasonable attorneys’ fees, less the amount of income received on the security under the Utah Uniform Securities Act, Utah Code Ann. §61-1-22(1)(b);
4. Three times the consideration paid for the securities, together with interest, costs, and attorneys’ fees under the Utah Uniform Securities Act, Utah Code Ann. §61-1-22(2), and punitive damages set forth under N.C. Gen. Stat. § 1D-15, or any other ground recognized by the Arbitrators;
5. Punitive damages under Utah law;
6. Attorneys’ fees, expenses and costs as provided by contract, statutes, FINRA rules, the Washington Consumer Protection Act, the Utah Uniform Securities Act, the North Carolina Securities Act, equity, or any other ground recognized by the Arbitrators;
7. Monetary amount necessary to compensate for the additional income taxes they will owe on any award;
8. All hearing and filing fees; and
9. Such other relief as the Arbitrators deem just and proper.

In the Answer to the Statement of Claim, Respondent requested:
1. An award dismissing the Statement of Claim in its entirety;
2. Paduhovich Claimants and James Claimants recover nothing; and
3. Such other, further and different relief as the Panel may deem appropriate.

In the Amended Answer to the Amended Statement of Claim, Respondent requested:
1. An award dismissing the Amended Statement of Claim in its entirety;
2. James Claimants recover nothing; and
3. Such other, further and different relief as the Panel may deem appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 17, 2015, pursuant to Rule 12312 of the Code of Arbitration Procedure (the “Code”), Respondent filed a motion to separate the joined claims of the Paduhovich Claimants and James Claimants. On September 28, 2015, the Paduhovich Claimants and James Claimants filed their response in opposition to the motion. On October 2, 2015, Respondent filed its reply.

On December 2, 2015, the Panel issued the following Order on the motion to separate claims:

Respondents motion is granted
The claims of the Geraldine H James entities shall continue on the currently established schedule for this case
The claims of the Janet L. Paduhovich entities are severed from this case, No. 15-01288. Claimants may file a new claim on behalf of those entities.

On March 3, 2016, the James Claimants filed a motion for sanctions. On March 13, 2016, Respondent filed a response in opposition as well as a motion for clarification. On March 18, 2016, the James Claimants filed their reply in support of the motion and did not respond to the motion for clarification. On April 5, 2016, the Panel issued an order deferring ruling on the James Claimants’ motion for sanctions until the evidentiary hearing. The Panel further ruled that the Panel may consider application of any of the sanctions provided for in Rule 12212 of the Code at the time of the evidentiary hearing.

On November 11, 2015, prior to the Panel granting the motion to separate claims, the Paduhovich Claimants and James Claimants filed a motion for leave to file an Amended Statement of Claim. At the time the motion was filed, the parties also stipulated to an agreed upon briefing schedule for responses and replies. FINRA did not receive responses to the motion. On March 9, 2016, the Panel issued the following Order:

1. Claimant’s Motion was filed prior to the Panel’s Order dated December 2, 2015, severing the claims in this case. The Panel has retained the portion of the case relating to the Geraldine H. James entities.

2. As the subject Motion to Amend predates the severance of the claims, the Motion is denied, with leave to refile an Amended Statement of Claim as to the claims of the James entities.

3. In the event the James Claimants elect to file an Amended Statement of Claim, it shall be filed not later than March 21, 2016. An Answer shall be filed not more than twenty (20) days after the date that the Amended Statement of Claim is filed. No Reply shall be allowed.

On March 17, 2016, the James Claimants filed an Amended Statement of Claim with prior written authorization by the Panel pursuant to its March 9, 2016 Order. The Panel noted that the substance of the Amended Statement of Claim reflected the severance of the original claims and elaborated on the James claim.

On April 12, 2016, Respondent filed an Amended Answer to the Amended Statement of Claim. On April 18, 2016, the James Claimants filed a motion to strike the Amended Answer. On April 27, 2016, Respondent filed its response in opposition to the motion. On May 2, 2016, the James Claimants filed their reply. On May 9, 2016, the Panel deferred hearing the motion to strike until the commencement of the evidentiary hearing. After due deliberation, the Panel now denies the motion.

On April 27, 2016, the James Claimants filed a supplemental brief regarding sanctions for alleged discovery violations. Respondent did not file a response. As noted in the Panel’s April 5, 2016 Order, the Panel deferred acting on the motion for sanctions until the evidentiary hearing concluded. Following the evidentiary hearing, the Panel concluded that Respondent was not forthcoming in producing documents in a timely and responsive manner and ruled that Respondent shall pay the James Claimants
$10,000.00 as a sanction for failure to comply with the discovery rules set forth in the Code.

On May 16, 2016, the day before the evidentiary hearing was scheduled to begin, FINRA received notice of the third arbitrator’s unavailability to appear at the evidentiary hearing. At the commencement of the evidentiary hearing, the parties and the remaining two arbitrators discussed the third arbitrator’s absence. The parties agreed and stipulated on the record that the remaining two panelists, G. E. Craig Doupe and Robert M. Stein, should constitute the Panel for the evidentiary hearing and for the remainder of the case.

A court reporter transcribed the evidentiary hearing and the parties agreed to make the court reporter transcription the official record of the proceeding. The Panel also made a digital recording as a backup.

The parties 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 post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to the James Claimants the amount of $67,966.46 in compensatory damages.
2. Respondent is liable for and shall pay to the James Claimants the amount of $10,000.00 as a sanction for failure to comply with the discovery rules set forth in the Code.
3. Respondent is liable for and shall pay to the James Claimants the amount of $375.00 as reimbursement for the non-refundable portion of the initial claim filing fee previously paid to FINRA.
4. Each party shall bear its own attorneys’ fees and other costs.
5. Any and all relief not specifically addressed herein, including exemplary, punitive, treble, and punitive treble damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees
FINRA Dispute Resolution assessed a filing fee* for each claim:
Initial Claim Filing Fee = $1,575.00

*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, LPL Financial LLC is assessed the following:

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<th>Fee Type</th>
<th>Amount</th>
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<tr>
<td>Member Surcharge</td>
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<tr>
<td>Member Process Fee</td>
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**Discovery-Related Motion Fees**
Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on a discovery-related motion on the papers with (1) one arbitrator @ $200.00 = $200.00
James Claimants submitted (1) discovery-related motion

Total Discovery-Related Motion Fees = $200.00

The Panel has assessed $200.00 of the discovery-related motion fees to Respondent.

**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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ $450.00/session = $450.00
Pre-hearing conference:  December 18, 2015 1 session

Three (3) Pre-hearing sessions with the Panel @ $1,125.00/session = $3,375.00
Pre-hearing conferences:  
October 28, 2015 1 session
November 23, 2015 1 session
April 1, 2016 1 session

Eight (8) Hearing sessions @ $1,125.00/session = $9,000.00
Hearing Dates: 
May 17, 2016 2 sessions
May 18, 2016 2 sessions
May 19, 2016 2 sessions
May 20, 2016 2 sessions

Total Hearing Session Fees = $12,825.00

1. The Panel has assessed $1,170.00 of the hearing session fees jointly and severally to the James Claimants.
2. The Panel has assessed $11,655.00 of the hearing session fees to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.
FINRA Dispute Resolution  
Arbitration No. 15-01288  
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ARBITRATION PANEL

G. E. Craig Doupe - Public Arbitrator, Presiding Chairperson  
Robert M. Stein  
- 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 Arbitrators' Signatures

G. E. Craig Doupe  
Public Arbitrator, Presiding Chairperson  
6/13/2016  
Signature Date

Robert M. Stein  
Public Arbitrator  
Signature Date

June 13, 2016  
Date of Service (For FINRA Dispute Resolution office use only)
FINRA Dispute Resolution
Arbitration No. 15-01288
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ARBITRATION PANEL

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Robert M. Stein                  - Public Arbitrator

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G. E. Craig Doupe
Public Arbitrator, Presiding Chairperson

Signature Date

Robert M. Stein
Public Arbitrator

Signature Date

June 13, 2016
Date of Service (For FINRA Dispute Resolution office use only)