Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants
Joseph Duane Long and Peggy Long JJTEN
Joseph Duane Long IRA
Joseph D. Long
PTC Cust IRA FBO Joseph Duane Long
PTC Cust IRA FBO Peggy Long
PTC Cust IRA FBO Willie Franklin Bates
Loretta R. Whisenhunt
Willie Franklin Bates TOD Account

vs.

Respondent
LPL Financial LLC

Nature of the Dispute: Customers vs. Member
This case was decided by an all-public panel.

REPRESENTATION OF PARTIES


CASE INFORMATION
Statement of Claim filed on or about: January 14, 2016.
Joseph D. Long signed the Submission Agreement: April 2, 2015.
PTC Cust IRA FBO Joseph Duane Long signed the Submission Agreement: April 2, 2015.
PTC Cust IRA FBO Peggy Long signed the Submission Agreement: April 2, 2015.
PTC Cust IRA FBO Willie Franklin Bates signed the Submission Agreement: January 26, 2016.
Loretta R. Whisenhunt signed the Submission Agreement: April 15, 2015.
Willie Franklin Bates TOD Account signed the Submission Agreement: January 26, 2016.

Statement of Answer filed by Respondent on or about: April 13, 2016.
LPL Financial LLC signed the Submission Agreement: May 2, 2016.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: negligence, failure to supervise, negligent misrepresentation, fraudulent misrepresentation and concealment, breach of fiduciary duty, violation of North Carolina Securities Act, breach of contract, principal/agent liability, and negligent retention of an agent. The causes of action relate to various securities.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested unspecified compensatory damages, pre-judgment and post-judgment interest at the statutory rate of 8% under N.C. Gen. Stat. Ann. § 24-1 (West 2015); return of actual charges and interest charged to Claimants by Respondent, reasonable costs and expenses, attorneys’ fees, all hearing and filing fees, punitive damages and such other and further relief as the Panel may deem just and appropriate.

In the Statement of Answer, Respondent requested that the Panel dismiss the Statement of Claim in its entirety, providing that Claimants recover nothing and granting Respondent other, further and different relief as deemed appropriate.

At the hearing, Claimants Joseph Duane Long and Peggy Long JJTEN, Joseph Duane Long IRA, Joseph D. Long, PTC Cust IRA FBO Joseph Duane Long, and PTC Cust IRA FBO Peggy Long requested compensatory damages in the amount of $1,796,524.32, 8% statutory interest in the amount of $1,196,433.15, plus 8% statutory interest on unit purchases or other cash transactions.

OTHER ISSUES CONSIDERED AND DECIDED

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

By correspondence dated January 10, 2017, Claimants filed a Motion to Sever. By correspondence dated February 28, 2017, Respondent requested that Claimants’ Motion be held in abeyance. Claimants filed a Reply dated March 12, 2017 requesting that the Panel grant its Motion to Sever.
A pre-hearing conference was held on March 24, 2017 to hear oral argument on Claimants’ Motion to Sever. After due deliberation and by Order dated April 3, 2017, the Panel noted that the parties did not agree to the composition of the Panel and requested adjournment of the hearings set to begin on April 24, 2017. The Panel ordered the parties to work with FINRA in selecting a replacement arbitrator, work with the newly formed Panel identifying alternative dates for the hearings, and determine if the pending Motion to Sever should be heard by the newly formed Panel or dismissed.

By correspondence dated May 17, 2017, the parties notified FINRA Dispute Resolution that they agreed to hold the Claimants’ Motion to Sever in abeyance. The Panel did not decide Claimants’ Motion to Sever and considers it as withdrawn.

On or about August 11, 2017, Claimants and Respondent filed notice of a joint dismissal of Claimants PTC Cust IRA FBO Willie Franklin Bates and Willie Franklin Bates TOD Account with prejudice.

The parties notified FINRA Dispute Resolution that they settled Claimant Whisenhunt’s claims on October 30, 2018.

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, 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 Claimants Joseph Duane Long and Peggy Long JJTEN, Joseph Duane Long IRA, Joseph D. Long, PTC Cust IRA FBO Joseph Duane Long, and PTC Cust IRA FBO Peggy Long compensatory damages in the amount of $389,608.00, representing $260,608.00 for trading losses and $129,000.00 for other losses.

2. Respondent is liable for and shall pay to Claimants Joseph Duane Long and Peggy Long JJTEN, Joseph Duane Long IRA, Joseph D. Long, PTC Cust IRA FBO Joseph Duane Long, and PTC Cust IRA FBO Peggy Long interest on the trading loss damages in the amount of $260,608.00 at the rate of 8% per annum pursuant to N.C. Stat. Ann. 78A-56(c) from November 1, 2011 through and including the date of this Award.

3. Respondent is liable for and shall pay to Claimants the sum of $160,790.00 in attorneys’ fees pursuant to N.C. Stat. Ann. 78A-56(c).

4. Any and all claims for relief not specifically addressed herein, including 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 = $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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent LPL Financial LLC is assessed the following:

- Member Surcharge = $1,900.00
- Member Process Fee = $3,750.00

**Postponement Fees**
Postponements granted during these proceedings for which fees were assessed or waived:

- April 24-28 and May 1-2, 2017, postponement by parties WAIVED
- November 5-7, 9-10, and 12-14, 2018, postponement by parties WAIVED
- November 7, 2019, postponement by Respondent = $1,125.00

Total Postponement Fees = $1,125.00

The Panel has assessed the $1,125.00 postponement fees to Respondent.

**Last Minute Cancellation Fees**
Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

- November 5-7, 9-10, and 12-14, 2018, postponement by parties WAIVED
- November 7, 2019, postponement by Respondent = $1,800.00

Total Last Minute Cancellation Fees = $1,800.00

The Panel has assessed the $1,800.00 last minute cancellation fees to Respondent.
Discovery-Related Motion Fee
Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) arbitrator @ $200.00/decision = $ 200.00

Respondent submitted one discovery-related motion

Total Discovery-Related Motion Fees = $ 200.00

The Panel has assessed the $200.00 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 arbitrators, including a pre-hearing conference with the arbitrators 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: May 29, 2018 1 session

Two (2) pre-hearing sessions with the Panel @ $1,125.00/session = $ 2,250.00
Pre-hearing conferences: July 12, 2016 1 session
March 24, 2017 1 session

Nine (9) hearing sessions @ $1,125.00/session = $10,125.00
Hearing Dates: November 4, 2019 2 sessions
November 5, 2019 2 sessions
November 6, 2019 2 sessions
November 8, 2019 1 session
November 9, 2019 2 sessions

Total Hearing Session Fees = $12,825.00

The Panel has assessed $1,350.00 of the hearing session fees jointly and severally to Claimants.
The Panel has assessed $11,475.00 of the hearing session fees to Respondent.

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

Barbara Black
Barbara Black
Public Arbitrator, Presiding Chairperson

James Howell Garrison, Jr.
James Howell Garrison, Jr.
Public Arbitrator

William Finley Hamel
William Finley Hamel
Public Arbitrator

December 19, 2019
Date of Service (For FINRA Office of Dispute Resolution office use only)