Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimants
Robert Yanik, Individually and as Trustee of the August & Helen Revocable Living Trust

vs.

Respondents
LPL Financial LLC and Bradley C. Fischer

Nature of the Dispute: Customers vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Robert Yanik, Individually and as Trustee of the August & Helen Revocable Living Trust (“Claimants”): Jason T. Albin, Esq., ChapmanAlbin LLC, Cleveland, Ohio.*


*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: July 6, 2018.
Claimants signed the Submission Agreement: May 24, 2018.

Statement of Answer filed by Respondents on or about: October 5, 2018
LPL signed the Submission Agreement: October 2, 2018.
Fischer signed the Submission Agreement: August 23, 2018.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: failure to supervise, suitability, breach of fiduciary duty, violation of FINRA Rule 2010, and fraudulent concealment. The causes of action relate to Claimants’ allegation that LPL,
through its registered representative, Fischer, preyed on Claimant Robert Yanik and his mother, by loading his investment portfolio with unsuitable, non-traded real estate investment trusts ("REITs") and by placing the majority of his mother’s retirement funds into unsuitable, high-risk, illiquid, non-traded REITs, while continuing to charge her an annual fee for providing investment advice on the account, resulting in losses to Claimants. The REITs at issue included Hines REIT, Inland American REIT, and Piedmont Office Realty Trust.

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages in excess of $450,000.00, punitive damages, attorneys’ fees, prejudgment interest, costs, and any other and further relief as the Panel may deem just and proper.

In the Statement of Answer, Respondents requested that the Statement of Claim be dismissed in its entirety, that they be awarded costs and expenses incurred in defending this claim, and that this matter be expunged from the Central Registration Depository ("CRD") records for Fischer.

**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 April 2, 2019, Claimants submitted a request that their claims against Respondents be dismissed without prejudice. On or about April 4, 2019, Respondent submitted a letter confirming their agreement that this matter be dismissed without prejudice and requested that the case remain open so that the Panel could consider Fischer’s expungement request.

On or about April 22, 2019, Fischer filed a Request for Expungement.

The Panel conducted a recorded, telephonic hearing on December 3, 2019 so the parties could present oral argument and evidence on Fischer’s request for expungement.

Neither Claimants nor Claimants counsel participated in the expungement hearing.

The Panel reviewed the CRD Snapshot for Fischer.

The Panel noted that the present case did not result in a settlement. Accordingly, the Panel did not review any settlement documents.

The Panel noted that Fischer did not previously file a claim requesting expungement of the same disclosure in the CRD.
In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim, Statement of Answer, hearing exhibits, the testimony of Fischer, and argument from Fischer’s attorney.

The party present at the hearing has 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 submission, the Panel has decided in full and final resolution of the sole issue of expungement submitted for determination as follows:

The Panel recommends the expungement of all references to the above-captioned arbitration, Occurrence Number 1992476, from registration records maintained by the CRD for Respondent Bradley Clyde Fischer (CRD Number 2494380) with the understanding that, pursuant to Notice to Members 04-16, Respondent Bradley Clyde Fischer 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 12805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

The Panel found unanimously that the record as a whole, including the pleadings, hearing exhibits, testimony of Fischer and argument by his attorney, clearly supported the conclusion that the claim and allegations in the Statement of Claim were false. The REIT investments that were at issue were made at least 11 years prior to filing of the Statement of Claim. Claimants voluntarily dismissed the Statement of Claim without prejudice prior to a hearing on the merits and without any settlement agreement or settlement payments. The documentary evidence (including, without limitation, the testimony of Fischer and exhibits, including new account applications, alternative investment transmittal sheets, subscription agreements, prospectus or private placement receipts, and subsequent investment forms completed and signed by Claimants in relation to the subject REIT investments) clearly refuted the allegations in the Statement of Claim regarding: (1) lack of liquidity; (2) no receipt of prospectuses; (3) non-disclosure of risks; (4) reverse churning (i.e., charging advisory fees on REIT or annuities); (5) quality and track record of product issuers; (6) over-concentration of Claimants’ portfolios in REITs; and (7) urging Claimants not to sell REITs. Additionally, the record showed that
Claimants, in fact, did sell some of their REIT investments at a profit. The record also showed that Claimants actually realized profits on their overall portfolios with Respondents, as well as their REIT portfolios (which were the securities at issue), and did not suffer losses.

**FEES**

Pursuant to the Code, the following fees are assessed:

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

Initial Claim Filing Fee = $1,425.00

*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, LPL is assessed the following:

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

**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 the Panel @ $1,125.00/session = $1,125.00
Pre-hearing Conference: November 6, 2018 1 session

One (1) hearing session on expungement request @ $1,125.00/session = $1,125.00
Hearing Date: December 3, 2019 1 session

Total Hearing Session Fees = $2,250.00

The Panel has assessed $562.50 of the hearing session fees to jointly and severally to Claimants.

The Panel has assessed $562.50 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed $1,125.00 of the hearing session fees to Fischer.

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

**Patrick R. Sughroue**  
12/19/2019  
Signature Date

Patrick R. Sughroue  
Public Arbitrator, Presiding Chairperson

**Mauricio Kohn**  
12/19/2019  
Signature Date

Mauricio Kohn  
Public Arbitrator

**Tracy L. Allen**  
12/19/2019  
Signature Date

Tracy L. Allen  
Public Arbitrator

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