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RECENT ARBITRATION AWARDS

With this issue's featured arbitration awards we have entered a new era. All of the highlighted arbitrations have one thing in common--the hearings were all held virtually, mostly via videoconference. In these “virtual” awards, FINRA panels have awarded compensatory damages, pre- and post- award interest, punitive damages, attorneys' fees and expungements. Two of the awards contain findings of a duty owed to a customer (although one is in a dissent). These awards once again demonstrate that these forms of relief can be won with proper case presentation and a receptive panel. This issue's survey features a case in which a FINRA panel concluded that seven out of seven occurrences on a Broker's CRD could be expunged even though these were separate unrelated claims on disparate factual and legal issues, proving once again that a Customer's non-participation or failure to object in an expungement hearing tilts the scales in favor of the broker being granted an expungement. The notable awards summarized below also include an award in which a broker was found liable to both the Claimants and his brokerage firm and a case which discusses the exclusion of an expert witness, as well as testimony permitted by an expert witness who was not timely disclosed in accordance with FINRA Rules.

Joshua Travis Anue Trust, Tenaya Laurel Anue Trust (Claimants) vs. E*Trade Securities, LLC (Respondents)

Case No. 19-01505

San Francisco, California

Hearing Dates: July 28, 2020 - July 30, 2020 (via videoconference)

Award Date: August 17, 2020

Counsel:

Counsel for Claimants: Samuel B. Edwards, Esq. and David W. Miller, Esq., Shepherd, Smith, Edwards & Kantas, LLP Houston, Texas. Counsel for Respondent: John E. Bersin, Esq. and Meredith F. Hoffman, Esq., New York, New York.

Arbitration Panel:

Peter H. Daly, Presiding Chairperson

Philip Aaron Tymon, Public Arbitrator

Robert James Wilkie, Public Arbitrator

***84** Investments at Issue:

The causes of action relate to the escheatment of each Claimant's shares of Cadence Design Systems, Inc., which were in their accounts with Respondent, and subsequent losses incurred by Claimants as the result of negligence by Respondent.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Breach of contract and warranties;
- (2) Promissory estoppel;
- (3) Conversion;
- (4) State fraud statutes;
- (5) Violation of the California Consumer Legal Remedies Act; and
- (6) Claims under common law.

Relief Requested:

- (1) All sums lost in the accounts;
- (2) All lost opportunities as a result of acts and/or omissions;
- (3) Rescission of any or all transactions as sought;
- (4) Statutory damages as provided by applicable law;
- (5) Punitive damages in an amount that the Panel shall deem appropriate;

(6) Pre-award and pre-judgment interest on all sums invested from the date deposited until the date of the award and/or judgment and until such sums are paid, all at the highest rate allowed by the law;

(7) All costs of these proceedings and for recovery of damages incurred, including legal fees, including while on appeal, if any, and for collections;

(8) Any and all relief available to Claimants, in law or equity or otherwise, which may be granted by the Panel.

Relief Requested Post Hearing:

At the close of the hearing, Claimants presented several different time related scenarios for damages as follows:

(1) Compensatory (liquidation) damages:

- a. Through September 2018 in the amount of \$139,318.30;
- b. Through May 30, 2019 in the amount of \$236,066.30;
- c. Through July 9, 2020 in the amount of \$425,539.62;

(2) Interest in the amount of 9% per annum;

(3) Attorneys' fees as 33% of the compensatory damages awarded; and

(4) Litigation expenses in the amount of \$3,335.97.


Award:

(1) Respondent is liable for and shall pay to Claimants the sum of \$139,318.30 in compensatory damages.

***85** (2) Respondent is liable for and shall pay to Claimants interest on the above-stated sum at the rate of 9% per annum from September 2018 until the award is paid in full.

(3) Respondent is liable for and shall pay to Claimants the sum of \$3,415.97 in costs.

(4) Respondent is liable for and shall pay to Claimants the sum of \$300.00 as reimbursement of non-refundable filing fee.

(5) Respondent is liable for and shall pay to Claimants the sum of \$45,975.04 in attorneys' fees pursuant to  *Synergy Gas Co. v. Sasso*, 853 F.2d 59 (2d Cir.), cert. denied, 488 U.S. 994 (1988); and *Royal Alliance Assocs. V. Piniewski*, 2016 U.S Dist. LEXIS 196443, *12, 2016 WL 11581005.

(6) Any and all claims for relief not specifically addressed herein, including any requests for rescission and punitive damages, are denied.

Analysis:

This award is noteworthy because in May 2020 Claimants filed a request for an order compelling a virtual arbitration hearing. Respondents filed an opposition to the request for a virtual hearing and Claimants filed a Reply. The Panel held a pre-hearing conference to hear oral arguments on the request for a virtual hearing. The Panel granted Claimants' request for a virtual hearing. Claimants were successful in obtaining substantial relief, including interest, costs, and attorneys' fees. Claimants' counsel was one of the pioneers helping to pave the way to evidentiary hearings via videoconferencing with this case.

Maria Kate Dunn Redwine (Claimant) v. Morgan Stanley & Co. LLC (Respondents)

Case No. 19-02913

Columbia, South Carolina (via videoconference)

Hearing Dates: November 23, 2020- November 25, 2020; November 27, 2020

Award Date: December 11, 2020

Counsel:

Counsel for Claimants: Carl D. Liggio, Sr., Esq. and William B. Fleming Esq., Gage Spencer & Fleming, New York, New York.

Counsel for Respondents: Adam M. Kauff, Esq. and Jonathan Perrelle, Esq., Kauff Laton Miller LLP, New York, New York.

*86 Arbitration Panel

Langfred W. White, Public Arbitrator, Presiding Chairperson

Karl A. Vogeler, III, Public Arbitrator

John Winslow Griesser, Public Arbitrator

Investments at Issue:

The causes of action relate to the alleged misappropriation of assets in

Claimant's trust account with Respondent, including a private placement investment (the "VIP" investment).

Claimants' Claims:

Causes of Action in Statement of Claim:

(1) Failure to Supervise,

(2) Fraud,

(3) Breach of Fiduciary Duty,

(4) Conversion,

(5) Negligence,

(6) Respondeat Superior.

Relief Requested:

(1) Compensatory damages in the amount of \$977,509.64 for misappropriation,

(2) Market adjusted damages in the amount of no less than \$2,000,000.00,

(3) Punitive damages in the amount no less than five times the compensatory damages awarded or to be determined by the Panel,

(4) Respondent be ordered to purchase the VIP investment from Claimant at cost, less amounts received by Claimant from VIP, plus interest thereon,

(5) Interest,

(6) Attorneys' fees,

(7) Costs.

Relief Requested Post Hearing:

Compensatory damages between \$7,353,550.79 and \$8,103,073.86 plus interest, costs, attorneys' fees, and punitive damages.

Award:

(1) Respondent was found to be liable for and shall pay to Claimant the sum of \$74,950.00 in compensatory damages, plus pre-award interest through November 27, 2020 of \$92,344.26, for a total of \$167,294.26,

(2) Respondent was found to be liable for and shall pay to Claimant interest on the sum of \$74,950.00 at the rate of \$17.97 per day from November 28, 2020 until this Award is paid in full.

(3) Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied and

***87** (4) The parties asked for an explained decision which stated:

During the time the trust for Claimant's benefit was held at Respondent, Respondent owed a duty to its customer. The Panel concurs that Respondent failed to adequately supervise its associated person and failed to enforce its

own rules, thereby allowing misappropriation from its customer to occur. Therefore, the Panel finds Respondent liable for misappropriations which occurred during the time the trust was Respondent's customer.

Analysis:

This award is noteworthy because it grants both pre- and post- award interest to Claimant, but even more so, because of the findings in the explained decision. In the decision, the Panel states that Morgan Stanley owed a duty to its customer and that therefore it was liable for misappropriations from its customer. It further found that it failed to supervise the broker and enforce its own rules allowing the misappropriation. Although this duty is not articulated more fully, the sole duty alleged by Claimant in its claims is the fiduciary duty.

Amanda B. Straight Revocable Trust (Claimant) v. UBS Financial Services Inc. (Respondents)

Case No. 19-02180

New York, New York (via videoconference)

Hearing Dates: August 11, 2020-August 12, 2020, August 31-September 4,

2020, September 11, 2020

Award Date: October 16, 2020

Counsel:

Counsel for Claimant: Seth E. Lipner, Esq., Deutsch & Lipner, Garden City, New York.

Counsel for Respondents: Joseph Serino, Jr., Esq., Latham & Watkins LLP, New York, New York.

Arbitration Panel:

John F. Duane, Public Arbitrator, Presiding Chairperson

Gerald H. Grayson, Public Arbitrator

Patricia Kathleen Costello, Public Arbitrator

Investments at Issue:

The causes of action relate to unspecified securities. The dissent mentions options.

***88** Claimant's Claims:

Causes of Action in Statement of Claim:

- (1) Unsuitability,

- (2) Violations of FINRA Rules 2111, 2360(b)(19), 2210, 2020, and 2010,

- (3) Misrepresentation and fraud,

- (4) Breach of fiduciary duty,

- (5) Negligence,

- (6) Negligent supervision,

- (7) Breach of contract, and

- (8) Omissions of material fact.

Relief Requested:

- (1) Compensatory damages in excess of \$1,000,000 but no more than \$1,500,000,

- (2) Interest at the legal rate,

- (3) Punitive damages,

- (4) Expert witness fees,

(5) A disciplinary referral to FINRA for Respondent and the advisor,

(6) Disgorgement of fees, and

(7) Costs.

Award:

1. Claimant's claims are denied in their entirety.

2. The majority of the Panel recommended the expungement of all references to Occurrence Number 2044830 from registration records maintained by the CRD for Unnamed Party Wendy Holmes (CRD Number 2944190) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Wendy Holmes 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 majority of the Panel has made the following Rule 2080 affirmative finding of fact: The claim, allegation, or information is false. The majority of the Panel has made the above Rule 2080 finding based on the following reasons: The evidence presented at the hearing demonstrated that the options trading strategy at issue was suitable for the Claimant, and that Claimant understood the risk involved and was capable of assuming that risk. During the time the trust for Claimant's benefit was held at Respondent, Respondent owed a duty to its customer. The Panel concurs ~~*89~~ that Respondent failed to adequately supervise its associated person and failed to enforce its own rules, thereby allowing misappropriation from its customer to occur. Therefore, the Panel finds Respondent liable for misappropriations which occurred during the time the trust was Respondent's customer.

3. The majority of the Panel recommends the expungement of all references to Occurrence Number 2044832 from registration records maintained by the CRD for Unnamed Party Eric Andrew Wittenberg (CRD Number 1552330) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Eric Andrew Wittenberg 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 majority of the Panel has made the following Rule 2080 affirmative finding of fact: The claim, allegation, or information is false. The majority of the Panel has made the above Rule 2080 finding based on the following reasons: The evidence presented at the hearing demonstrated that the options trading strategy at issue was suitable for the Claimant, and that Claimant understood the risk involved and was capable of assuming that risk.

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

Analysis:

This award is noteworthy because of the complete disagreement of the facts and law between the majority panel and Arbitrator Grayson who penned a reasoned dissent. In this split decision, the majority denied Claimant's claims, and even expunged the broker's records with the required finding under FINRA Rule 2080 that the claim, allegation or information was false and explicitly stating that the options strategy was suitable for the Claimant and that Claimant understood the risks. Notwithstanding this, Arbitrator Grayson's dissent found that:

Based upon all of the testimony and all of the documentary evidence presented by both parties to this matter, I have reached the following conclusions: The UBS Holmes-Wittenberg Group failed to meet their obligations under FINRA Rule 2111 as to suitability in regard to the options investments that they recommended to the Amanda B. Straight Revocable Trust; the UBS Holmes-Wittenberg Group failed to meet their obligations under FINRA Rule 2360 as to suitability in regard to the options *90 investments that they recommended to the Amanda B. Straight Revocable Trust; and, as Investment Advisors, the Holmes-Wittenberg Group failed to meet their responsibilities as fiduciaries.

This rare explained split decision highlights why many cases ultimately settle before a final hearing. Here, the divergent opinions demonstrate how arbitrators can all hear the same evidence and still come out on opposite sides.

James L. Springer (Claimant) v. UBS Financial Services, Inc. (Respondent)

Case No. 20-01606

Boca Raton, Florida (via telephone conference)

Hearing Dates: December 10, 2020

Award Date: January 8, 2021

Counsel:

Counsel for Claimant: Nisha S. Wright, Esq., Stein & Stein, P.A., Palm Beach, Florida.

Counsel for Respondent: Omar Perez, Esq., UBS Business Solutions US LLC, Nashville, Tennessee.

Arbitration Panel

Edward R. Niederriter, Public Arbitrator, Presiding Chairperson

Justin Wallace Askins, Public Arbitrator

Sheryl Sagel, Non-Public Arbitrator

Investments at Issue:

Claimant asserted a claim seeking expungement of customer dispute information regarding seven occurrences from registration records maintained by the Central Registration Depository (“CRD”) Two of these occurrences were related in that one was a complaint letter that became a FINRA arbitration.

Claimant's Claims:

Causes of Action in Statement of Claim:

(1) Expungement of Occurrence Numbers 1917472, 1771228, 1635259, 1451955, 1398515, and 1463559 from registration records maintained by the CRD for Claimant James L. Springer.

Relief Requested:

(1) Expungement of Occurrence Numbers 1917472, 1771228, 1635259, 1451955, 1398515, and 1463559 from registration records maintained by the CRD for Claimant James L. Springer. ***91** Relief Requested At Hearing: Claimant additionally asked for expungement of Occurrence Number 1725330 at the hearing.

Award:

(1) The Panel recommended the expungement of all references to Occurrence Numbers 1917472, 1771228, 1635259, 1451955, 1398515, 1463559, and 1725330 from registration records maintained by the CRD for Claimant James L. Springer (CRD Number 2535792) with the understanding that, pursuant to Notice to Members 04-16, Claimant James L. Springer 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 Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The claim, allegation, or information is false. The Panel has made the above Rule 2080 findings based on the following reasons:

As to Occurrence Number 1917472: The Customers alleged excessive fees were charged on multiple accounts. The Panel finds these claims were false because the Customers signed and agreed to such fees as part of the investor application and the fees were further disclosed in monthly and yearly statements, as well as 1099s. The Customers' letter complaint was filed 2 and 1/2 years after Claimant was terminated by Respondent and was the result of Respondent attempting to change the fee structure for such accounts. The Customers never complained to Claimant and testimony by one of the Customers at the hearing indicated he did not oppose expungement but his appearance was merely "to supply information" for the Panel. As to Occurrence Number 1771228: The Customer alleged certain real estate partnerships were unsuitable investments for his Individual Retirement Account and he sought recoupment of tax consequences related to such investments. The Panel found such allegation false; that the investments were made in 2004 and 2005 but the written complaint *92 was not filed until 2015, nearly a year after Claimant had been terminated by Respondent. All appropriate documentation (including qualified purchaser documentation) was executed by the Customer which disclosed the potential tax consequences. The Customer remained a client of Claimant during his entire tenure with Respondent and the investment was profitable.

As to Occurrence Number 1635259: This was a written complaint which alleged that a portion of the Customer's investment in asset management funds were in gold and such was a speculative unsuitable investment. The Panel found such claim false inasmuch as this type of investment was suitable based on the Customer's recorded risk tolerance and that he was a highly sophisticated and a qualified investor. The Customer remained a client of Claimant after his claim was denied. The Customer informed counsel at the time of notice of this hearing that he would not appear, nor did he oppose expungement. As to Occurrence Numbers 1451955 and 1725330: Occurrence Number 1451955 was a written complaint filed against Respondent and Occurrence Number 1725330 was a FINRA Arbitration (Case Number 14-02636) filed against Respondent by the same Customer. The written complaint alleged that one of the Customer's investments was speculative and unsuitable. The arbitration claim had similar allegations related to unsuitability of an investment. The written complaint was denied by Respondent with no further action taken, while the arbitration claim was settled for a fraction of the relief requested. The Panel decided that both Occurrences were false; that the Customer was a highly sophisticated and active investor; that his varied investments were in line with his recorded risk profile and were suitable. The Panel also reviewed the settlement agreement and confirmed that Claimant was not a party to the action and did not contribute any money or sign the settlement agreement. Counsel reported that when the Customer received notice of the expungement action, he stated he would not participate nor oppose expungement. As to Occurrence Number 1398515: This was a written complaint against Respondent that related to the industrywide breakdown in the market for auction rate securities ("ARS"). The Customer was a highly sophisticated investor that utilized ARS in lieu of a cash account. The Panel found that Claimant was not involved in the alleged sales practice violation and that the Customer's investments were in line with his recorded risk profile. Moreover, Respondent, as part of a global settlement with regulatory bodies, repurchased the ARS securities from the Customer at par value. Claimant did not participate *93 in any of the settlement discussions nor did he contribute to the settlement.

As to Occurrence Number 1463559: This was a FINRA Arbitration (Case Number 10-02352) against Respondent wherein the Customer alleged an unsuitable recommendation of Lehman Structured Products and failure to follow

an Order to sell the products. The Panel found that this allegation was clearly erroneous and false. The evidence indicated that this investment by the Customer was unsolicited; that the Customer reviewed the prospectus and offering material in advance of his decision to purchase, and that the investment was suitable and in line with the Customer's risk profile. Also, the Panel found that Claimant did not participate in settlement negotiations nor did he contribute to the settlement.

Analysis:

This award is noteworthy because seven separate occurrences regarding six disparate customers and involving completely different products and facts were collectively expunged after a one day hearing at which only one Claimant appeared. That Claimant's appearance was simply to state that he did not object to the expungement of occurrence 191742 which related to excessive commissions charged. While four of the seven occurrences did ostensibly involve product issues (excessive fees, Auction Rate Securities and Lehman Structured Products) all seven of the occurrences were expunged by the Panel in one sweeping award. The remaining occurrences which were not product related contained allegations of 1) the unsuitable purchase of a real estate partnership in an IRA account; 2) an unsuitable recommendation in a speculative gold security; and 3) unsuitable unspecified speculative investments. This expansive expungement order shows just how easy it is to file a FINRA claim and "sanitize" a broker's record which had been littered with customer complaints.

Valeria Blanchard (Claimant) v. First Financial Equity Corporation. (Respondent)

Case No. 20-01189

Reno, Nevada (via telephone conference)

Hearing Dates: November 16, 2020 (Motion to Dismiss)

Award Date: January 5, 2021

Counsel:

Counsel for Claimants: Lauren Koch, Nevada City, California

***94** Counsel for Respondent: Jason L. Cassidy, Esq., Ryley Carlock & Applewhite, Phoenix, Arizona.

Arbitration Panel

David I. Levine, Public Arbitrator, Presiding Chairperson

Arocles Aguilar, Public Arbitrator

Mary H. Evans, Non-Public Arbitrator

Investments at Issue: Various unspecified securities in a Trust Account. Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Elder Abuse,
- (2) Fraud,
- (3) Misrepresentation,
- (4) Failure to Supervise,
- (5) Breach of Fiduciary Duty,
- (6) Errors/charges, and
- (7) Omissions of fact.

Relief Requested:

- (1) Compensatory damages of \$120,000.00,
- (2) Punitive damages of \$100,000.00.

Award:

- (1) Claimant's claims were dismissed pursuant to Rules 12200, 12201, and 12504
- (2) Claimant is liable for and shall pay to Respondent the sum of \$5,000.00 in attorneys' fees pursuant to [Arizona Revised Statutes §12-349](#), and

(3) Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

Analysis:

This case is notable for the pre-hearing dismissal and attorney's fees assessed against the son of the Claimant who having no authority to do so brought this claim (and who acted as his own attorney). He was sanctioned \$5,000 for not investigating the facts underlying the claims he sought to bring. The son had no authority from his mother or her trust to bring the claims. Neither the Claimant nor her son had an account at the Respondent firm (the accounts were in the name of a family trust), and the complained of agreements for advisory services were all between the family trust and an outside investment advisory who was not the Respondent. The Claimant had no authority from the trustees of the family trust to bring the arbitration. Most importantly, the trustees of the family trust had previously settled these same claims in writing. Based upon this set of overwhelming facts, the panel dismissed all claims and a sanctioned the son, assessing \$5,000 for attorney's fees against him under Arizona law [*95](#) and finding as follows:

Respondent sought an award of reasonable attorney's fees as part of the relief requested in its answer and in its motion. Pursuant to [A.R.S. § 12-3021\(B\)](#), “an arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration only if that award is authorized by law in a civil action involving the same claim” The

Panel believes that an award of reasonable attorney's fees would be justified under [A.R.S. § 12-341.01](#) because this action arose out of a contract applying Arizona law. An award is also justified against Mr. Koch under [A.R.S. § 12-349](#). He brought this claim on behalf of his mother without substantial justification and the proceedings were unreasonably delayed by his actions. Pursuant to [A.R.S. § 12-350](#), the reasons why an award is justified under [A.R.S. § 12-349](#) include the following: (a) A minimum amount of effort prior to the assertion of these claims would have demonstrated that neither Ms. Blanchard nor Mr. Koch were entitled to bring these claims to this arbitration. (b) No effort was made after the commencement of the action to reduce the number of claims being asserted or to dismiss the invalid claims. (c) The operative facts which would have determined the invalidity of the claim were readily available to Mr. Koch. (d) These facts were never reasonably in conflict in this matter. (e) Claimant has prevailed on no claims in controversy. (f) In mitigation, the Panel presumes that Mr. Koch and Ms. Blanchard have fewer financial resources than Respondent. Although the Respondent submitted evidence that it incurred much higher (but still reasonable) attorney fees, the Panel concludes that an award of \$5,000 against Mr. Koch only is appropriate to mitigate the burden of the expense of litigation. [A.R.S. § 12-349](#). See [A.R.S. § 12-341.01\(B\)](#).

The Van Dierendonk Family Trust, Edmond W. Van Dierendonk and Susanna M. Van Dierendonk (Claimants) v. ProEquities, Inc., Narinder Kaur Singh, Transamerica Financial Advisors, Inc. (Respondents) and ProEquities, Inc. (Cross-Claimant) v. Narinder Kaur Singh (Cross-Respondent)

Case No. 19-02711

Phoenix, Arizona

Hearing Dates: July 20, 2020 and July 21, 2020 (via videoconference)

Award Date: August 14, 2020

Counsel:

Counsel for Claimants: Jeffrey A. Feldman, Esq., Law Offices of Jeffrey A. Feldman, San Francisco, California.

***96** Counsel for Respondent: Stephen C. Jackson, Esq., Maynard, Cooper & Gales, P.C., Birmingham, Alabama

Arbitration Panel:

John H. Fearnow, Presiding Chairperson

Michael Kelley, Public Arbitrator

Floyd Gerry Hoffman, Public Arbitrator

Investments at Issue:

The causes of action relate to an investment contract in Express Asset and Wealth Management that resulted from cash generated from the sale of Claimants' home in California.

Claimants' Claims:

(1) Violation of the Arizona and California Securities Act;

(2) Breach of Fiduciary Duty

(3) Negligent Supervision

(4) Misrepresentation

(5) Fraud

(6) Constructive Fraud

(7) Breach of Contract

(8) Violation of the Arizona Consumer Fraud Act

(9) Conversion

(10) Elder abuse under the California Welfare and Institutions Code.

Cross-Claim:

ProEquities denied the allegations made in the Statement of Claim, asserted various affirmative defenses and asserted a Cross-Claim against Singh for breach of contract, contractual indemnity and common law indemnity and contribution.

Relief Requested:

Claimants requested an award against Respondents in an amount between \$1,000,000 and \$2,000,000 as follows:




- (1) Rescission of the investment contracts sold to Claimant together with 10% interest from the dates of the investments;
- (2) In the alternative, with respect to the investment contracts, lost principal in the amount of \$412,500 and well managed account damages relating to that sum;
- (3) Reasonable attorneys' fees pursuant to the Arizona Securities Act, Arizona Consumer Fraud Act, and the California Welfare and Institutions Code relating to elder abuse;
- (4) Treble damages pursuant to [California Civil Code Section 3345](#);
- (5) All reasonable costs incurred during this arbitration;
- (6) Punitive and exemplary damages according to proof at the arbitration hearing; and
- *97 (7) Such other relief as the Panel deems just and proper.

In the Cross-Claim, ProEquities requested:

- (1) Rejection of Claimants' Statement of Claim in its entirety;
- (2) Judgment against Singh;
- (3) An award of all damages available under the law, including but not limited to its attorneys' fees in this case.

Relief Requested at Hearing:

Claimants requested a finding of fraud and/or breach of fiduciary duty. Award:

- (1) Singh is liable for and shall pay to Claimants the sum of \$207,620.70 in compensatory damages.
- (2) Singh is liable for and shall pay to Claimants interest in the amount of \$103,125.00, at the rate of 5% on the sum of compensatory damages and costs, accruing from January 1, 2019 through July 6, 2020, pursuant to the Investment Contract.
- (3) Singh is liable for and shall pay to Claimants the sum of \$100,000.00 in punitive damages pursuant to  [Thompson v. Better-Bilt Aluminum Products Co., 171 Ariz. 550, 832 P2d 203](#). The Panel found that Singh's conduct in this matter constituted fraud and/or breach of a fiduciary duty to Claimants, which is the basis for the punitive damages award.
- (4) Singh is liable for and shall pay to Claimants the sum of \$83,048.00 in attorneys' fees pursuant to the  [ARS Section 12-341.01](#).
- (5) Singh is liable for and shall pay to Claimants the sum of \$484.71 in costs.
- (6) Singh is liable for and shall pay to ProEquities the sum of \$67,500.00 in compensatory damages.
- (7) Singh is liable for and shall pay to ProEquities the sum of \$45,350.80 in attorneys' fees pursuant to the contract agreement between Respondent and ProEquities, and  [Goetel vs. WSI-Cunningham, 194 Arizona 236, 980 P2d 489](#).

Analysis:

This award is noteworthy because the parties filed a stipulation to have the evidentiary hearing held via videoconferencing and the Panel granted the parties' request. Also noteworthy, is that the Claimants filed a notice of partial settlement advising that all claims against Transamerica and ProEquities were dismissed with prejudice. The Claimants and Cross-Claimants proceeded to hearing with their causes of action against Respondent Narinder Singh. Respondent Singh was found liable to both Claimants and ProEquities. The substantial award for Claimants included interest, costs, punitive damages, and attorneys' fees. Furthermore, the *98 Panel found that Singh's conduct constituted fraud and/or breach of fiduciary duty to Claimants which was the basis for the punitive damages award. Singh was also found liable to ProEquities for compensatory damages and attorneys' fees.

Kyle T. Busch and Samantha L. Bush v. Commonwealth Financial Network, Charles Franklin Parks and C.F. Parks & Co., Inc.

Case No. 17-02244

Charlotte, North Carolina

Hearing Dates: February 4-6, 2020 in person and October 12-16, 2020 (via videoconference)

Award Date: November 17, 2020

Counsel:

Counsel for Claimants: Michael S. Taaffe, Esq., Shumaker, Loop & Kendrick, LLP, Sarasota, Florida.

Counsel for Respondent: Charles Franklin Parks, and C.F. Parks & Co., Inc. and Peter B. King, Esq., Wiand Guerra King, P.A., Tampa, Florida.

Arbitration Panel:

Richard E. Miley, Presiding Chairperson

Patricia Ann Tracey, Public Arbitrator

James Howell Harrison, Jr., Public Arbitrator

Investments at Issue: Various securities.

Claimants' Claims:

(1) Violation of North Carolina Securities Act;

- (2) Breach of contract;
- (3) Breach of fiduciary duty;
- (4) Violation of FINRA Rule 2010;
- (5) Violation of FINRA Rule 2111;
- (6) Common law fraud;
- (7) Constructive fraud;
- (8) Negligence/negligent misrepresentation or omission; and
- (9) Negligent supervision.

Relief Requested:

- (1) Unspecified compensatory damages;
- (2) Punitive damages;
- (3) Interest;
- (4) Attorneys' fees and costs pursuant to North Carolina Securities Act; and
- (5) Such other relief as the Panel deems just and equitable.

Relief Requested Post Hearing:

***99** (1) Claimants requested damages in the amount of \$1,700,000.00 together with attorneys' fees and costs.

Award:

(1) Respondents Commonwealth, Parks, and C.F. Parks are jointly and severally liable for and shall pay to Claimants the sum of \$110,000 in compensatory damages for the breach of contract count and violation of FINRA Rule 2111 (suitability).

(2) Respondent Commonwealth is liable for and shall pay to Claimants the sum of \$25,000.00 in compensatory damages for negligent supervision.

(3) Respondent Commonwealth, Parks and C.F. Parks are jointly and severally liable for and shall pay to Claimants interest of \$110,000 at the rate of 8% per annum from the date of the award until payment in full on the award for breach of contract and suitability.

(4) Respondent Commonwealth is liable for and shall pay to Claimants interest of \$25,000 at the rate of 8% per annum from the date of the award until payment in full on the award of negligent supervision.

(5) Claimants' remaining claims are denied in their entirety.

(6) Respondent Park's request for expungement of his CRD record is denied.

(7) Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees were denied.

Analysis:

This award is noteworthy because after Claimants' case-in-chief, Respondents made a Motion to Dismiss asserting that Claimants had failed to prove all essential elements of the claims asserted in the Statement of Claim, particularly as to suitability (violation of FINRA Rule 2111), and Claimants opposed the motion. After due deliberation, the Panel denied Respondents' Motion to Dismiss. Additionally, Claimants asserted error and unfairness regarding the Panel's sustaining Respondents' objections and not allowing their witness to testify as an expert witness on the suitability of certain investments. However, during the course of the witness's testimony, Counsel for Claimant stated several times that the witness was offered as an expert witness on other matters and not as to suitability. The Panel found that the witness also testified in essence that she did not have expertise on suitability issues. Furthermore, Respondents objected to Claimants' offer of a second expert witness on the grounds that the witness was not included as a witness on Claimants' 20-day disclosure list. The Panel allowed the witness to testify subject to Respondents' objections and the Panel reserved its ruling on the acceptance of the ***100** expert's testimony. During deliberation, the Panel overruled Respondents' objections and then allowed

and considered the expert witness's testimony. Ultimately, Claimants' efforts prevailed and Claimants received an award of compensatory damages and interest.

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