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RECENT ARBITRATION AWARDS

This issue's featured arbitration awards include cases in which FINRA arbitration panels granted noteworthy relief, including an award imposing liability on a clearing firm for the notorious Stanford Financial Ponzi scheme. Several of this issue's awards involve cases brought by pro se Claimants. Those cases resulted in disparate results, with one award denying the pro se Claimant's claims, while imposing damages against the Claimant on the Respondent's counterclaim. In two other pro se cases brought on operational grounds, the Claimants were successful, perhaps because proof of such claims was easily determined by the panel through examination of the documents. Also included are two awards where the estates of a deceased account holder were awarded damages. One involves the Respondent's mismanagement of an insurance product and the other asserted claims of an imposter stealing from the decedent's account. These cases dispel the misconception that arbitrators are reluctant to award damages to an account holder's heirs.

Joyce E. Cagle IRA, Joyce E. Cagle, Isom R. Cagle, J. Russell Mothershed, Susan Kay Lankford IRA, Susan Kay Lankford, Craig D. Nelson IRA, Craig D. Nelson, Cynthia Clark Nelson, Dudley Devore IRA, Dudley Devore, James T. Dorris IRA, James T. Dorris, Huey P. Decoto IRA, Huey P. Decoto, Hazel F. Decoto, Frankie Wayne Bono IRA, Frankie Wayne Bono, Marilyn Ainsworth, as Personal Representative of the Estate of Lawrence Ainsworth, Jeffrey Roe, Kellie Roe, Michael A. Teague, Steven Brauser, as Personal Representative of the Estate of Gerald Brauser, Richard Griswold IRA, Richard Griswold, Thomas Guennewig IRA, Thomas Guennewig and Victoria Guennewig, Charles Kenneth Babin, Millicent H. Babin, Lennard J. Belaire, Barbara A. Belaire, Lennard J. Belaire IRA, Bobbie L. Belaire, Edna T. Belaire, Walter J. Eldredge IRA, David Guidry, Ann Guidry, Kenneth Musick, Celia Musick, Kenneth Musick IRA, Dean M. Simon, Betty S. Simon, Angie Villemarette, George M. Glantz Revocable Trust, George M. Glantz IRA, Charlie Hayek, Kathleen Gilmartin, David E. Herndon IRA, David Herndon, Joann D. Herndon, Jimmie E. Bridges, Brenda Bridges, Steven M. Graham, and Charles A. Pope (Claimants) vs. Pershing LLC (Respondents)

Case No. 20-00922 and 20-03862 (consolidated)

Dallas, Texas

*452 Hearing Dates: May 31, June 1-5, 2021

Award Date: July 8, 2021

Counsel:

Counsel for Claimants:

Donald L. Ferguson, Esq., Portland, Maine, Charles E. Scarlett, Esq., Boca Raton, Florida, and Nicole D. Cottone, Esq., Houston, Texas.

Counsel for Respondent:

Jeffrey J. Chapman, Esq., McGuireWoods LLP, New York, New York and Thomas M. Farrell, McGuireWoods LLP, Houston, Texas.

Arbitration Panel:

Eric Ross Cromartie, Presiding Chairperson, Synthia L. Taylor, Public Arbitrator, Anisha Kinra, Public Arbitrator

Investments at Issue:

The causes of action related to Claimants' allegations that Respondent, acting as custodian and clearing firm for Stanford Group Company ("SGC"), gave material assistance to a Ponzi scheme, involving CDs issued by Stanford International Bank, Ltd. ("SIBL") and recommended by SGC financial advisors. Claimants further alleged that despite having concerns about the CDs and SGC, Respondent continued to provide assistance.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Aiding and abetting common law fraud;
- (2) Aiding and abetting breach of fiduciary duty;
- (3) Negligence (gross negligence);
- (4) Breach of contract;
- (5) Violation of FINRA Conduct Rule 3310;
- (6) Violation of FINRA Conduct Rule 2120;
- (7) Violation of NASD Conduct Rule 2110 (now FINRA Rule 2010);
- (8) Violation of NASD Conduct Rule 3110;

(9) Civil conspiracy to defraud;

(10) Participation in common law fraud;

(11) Participation in the breach of fiduciary duty by SGC

Relief Requested:

(1) Full rescission of the CDs issued by SIBL that were purchased by Subsequent Claimants and an award of approximately \$4,620,000 in compensatory damages.

(2) Punitive damages;

(3) Pre-judgment and post-judgment interest, at the legal rate, for Claimants' loss of use of capital, as permitted by law;

***453** (4) All costs and fees incurred in this action, including all forum fees, expert witness fees, and any additional costs/fees incurred by counsel; and

(5) Such further relief as the Arbitrators deem just and appropriate.

(6) In the First Amended Statement of Claim, First Amended Claimants reasserted the previous relief request but requested \$5,320,000.00 in compensatory damages.

(7) In the Second Amended Statement of Claim, Second Amended Claimants reasserted the previous relief requested.

(8) In the Third Amended Statement of Claim, Third Amended Claimants reasserted the previous relief request but requested approximately \$7,070,000.00 in compensatory damages.

(9) In the Corrected Statement of Claim, Corrected Claimants reasserted the previous relief requested, but requested approximately \$5,320,000.00 in compensatory damages.

(10) Subsequent Claimants requested full rescission of the CDs issued by SIBL that were purchased by Subsequent Claimants and an award of approximately \$4,174,975.00 in compensatory damages;

(11) Punitive damages;

(12) Pre-judgment and post-judgment interest, at the legal rate, for Claimants' loss of use of capital, as permitted by law;

(13) All costs and fees incurred in this action, including all forum fees, expert witness fees, and any additional costs/fees incurred by counsel; and

(14) Such further relief as the Arbitrators deem just and appropriate.

Relief Requested Post Hearing:

(1) At the hearing, Third Amended Claimants requested \$10,585,195.08 in damages and \$6,239,360.32 in interest, for a total award of \$16,824,585.40.

(2) After the hearing, Corrected Claimants submitted a Stipulated Damages request of \$10,563,324.73.

Award:

(1) Respondent is liable for and shall pay to Charles A. Pope the sum of \$436,000.00 in compensatory damages.

(2) Respondent is liable for and shall pay to Dudley Devore IRA the sum of \$124,593.00 in compensatory damages.

(3) Respondent is liable for and shall pay to Joyce E. Cagle the sum of \$87,200.00 in compensatory damages.

(4) Respondent is liable for and shall pay to Corrected Claimants \$750.00 in costs as reimbursement for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.

***454** (5) Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

Analysis:

This award is noteworthy because it involves clearing firm liability for the notorious Stanford Financial CD Ponzi scheme. The Panel provided an explained decision finding that based on all the evidence and testimony presented, by the beginning of 2008, Respondent had the requisite level of knowledge as to SGC's wrongful conduct in connection with the CD scheme, that it knew or should have known that it was providing meaningful/substantial assistance to that wrongful scheme by remaining the clearing firm for SGC in the United States and, more particularly, by facilitating wire transfers for the purpose of CDs issued by SIBL on behalf of Charles A. Pope, Dudley Devore IRA and Joyce E. Cagle during 2008. This rare explained decision provides a meaningful analysis of clearing firm liability.

Rick and Jennea Augsbury v. Gregory W. Rachele

Case No. 20-01499

Dallas, Texas

Hearing Dates: July 9, 2021

Award Date: July 21, 2021

Counsel:

Counsel for Claimants:

Barrett T. Robin, Esq. Hamilton Wingo, LLP Dallas Texas

Counsel for Respondent:

Gregory W. Rachele appeared pro se.

Arbitration Panel:

Robert L. Yeager, III, Presiding Chairperson, Joseph A. Vicario, Jr., Public Arbitrator, Albert Joseph Roberts, Public Arbitrator

Investments at Issue:

The causes of action relate to Claimants' allegation that Respondent, acting with discretionary trading authority, implemented a strategy of buying and holding substantial positions in leveraged and inverse exchange traded funds.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Breach of fiduciary duty;

- (2) Breach of contract; (3) Common law fraud;

- (4) Violation of Texas Securities Act § 33-2 et seq.;

- *455 (5) Violation of the Securities Exchange Act of 1934 § 10(b);

- (6) Violation of the Texas Deceptive Trade Practices Act § 17.50 et seq.;

- (7) Gross negligence.

Relief Requested:

- (1) Unspecified amount in actual damages;

- (2) Interest at the legal rate accruing from the date of the payment of consideration;

- (3) Economic damages and/or damages for mental anguish;


- (4) Treble damages;

- (5) Attorneys' fees and expenses under Tex. Civil Prac. & Rem. Code § 33-1 or other applicable law.

Relief Requested Post Hearing:

- (1) Actual damages in the amount of \$689,288.82;
- (2) Lost profits in the amount of \$1,377,115.74;
- (3) Recovery of account management fees in the amount of \$103,003.78;
- (4) Attorneys' fees in the amount of \$15,000;
- (5) FINRA filing fees and hearing costs.

Award:

- (1) Respondent is liable for and shall pay to Claimants the sum of \$792,292.60 in compensatory damages, including reimbursement of account management fees.
- (2) Respondent is liable for and shall pay to Claimants the sum of \$15,000.000 in attorneys' fees pursuant to Tex. Sec. Act § 33-1 and  [Tex. Civ. Prac. & Rem. Code § 38.001](#).
- (3) Respondent is liable for and shall pay to Claimants the sum of \$375.00 as reimbursement of the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
- (4) Any and all claims for relief not specifically addressed herein, are denied.

Analysis:

This award is noteworthy because Claimants filed a request for default proceedings pursuant to Rule 12801 of the Code of Arbitration Procedure. Accordingly, the claims against Respondent proceeded pursuant to Rule 12801 of the Code, with the Chairperson of the three-member Panel remaining the sole Arbitrator until Respondent filed his Statement of Answer. Thereafter, the default proceedings against the Respondent were terminated, the three-member panel was reinstated, and the case proceeded under the regular provisions of the Code. Also noteworthy, is that Claimants received attorney's fees pursuant to Texas statute in the amount requested of \$15,000 on a compensatory damage award of \$792,292.60.

***456 Richard Birney v. Taylor Capital Management, Inc., Mark Gregory Raezer and Dennis Mitchell Farrah**

Case No. 18-00617

Denver, Colorado

Hearing Dates: Decision on the papers

Award Date: June 29, 2021

Counsel:

Counsel for Claimants:

Jeffrey Pederson, Esq., Greenwood Village, Colorado

Counsel for Respondent:

Preston Spears, Woodstock Georgia for Taylor Capital Management, Russel K. Bean, Esq., Aurora, Colorado for Respondent Raezer and Blain K. Bengtson, Esq., Jones & Keller, P.C., Denver, Colorado for Respondent Farrah.

Arbitration Panel:

Steven Meyrich, Presiding Chairperson, Ronald G. Guida, Public Arbitrator, Rick Gale Doty, Public Arbitrator

Investments at Issue:

The causes of action relate to Respondents' alleged sale of unregistered limited partnership securities to Claimant.

Claimants' Claims:

Causes of Action in Statement of Claim:

(1) Breach of fiduciary duty;

(2) Fraud;

(3) Misrepresentation;

(4) Negligence;

(5) Violation of Colorado securities law, [C.R.S. § 11-51-501 et. seq.](#) Relief Requested:

- (1) Rescission of the investments, or in the alternative, compensatory damages in the amount not less than \$424,052;
- (2) Consequential damages in an amount according to proof;
- (3) Disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondents as a result of their unlawful acts and practices in an amount according to proof;
- (4) Punitive and exemplary damages in an amount to be determined by the Panel;
- (5) Pre-award and post-award interest at the maximum rate allowed by law from the date of the original investment;
- (6) Costs and expenses, including reasonable attorneys' fees, expert witness fees and other costs deemed reasonable.

***457** Counter-claim Relief Requested:

- (1) Farrah requested compensatory damages;
- (2) Pre-judgment and post-judgment interest;
- (3) Attorneys' fees and costs; and
- (4) Such other and further relief as permitted under the law or that the Panel deems just and proper.

Award:

- (1) TCM is liable for and shall pay to Claimant the sum of \$424,052, inclusive of costs and disbursements.
- (2) Claimant and TCM shall be responsible for their respective attorney's fees;

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

Analysis:

This award is noteworthy because by way of a counterclaim an individual Respondent asserted a cause of action for malicious prosecution relating to statements by Claimant to government investigators which allegedly lacked probable cause and were motivated by malice. Respondent filed a Motion for Stay of Arbitration Pending Resolution of Criminal Proceedings. Ultimately the case was resolved by a stipulated award in which the Respondent paid Claimant \$424,052. The product at issue was an unregistered limited partnership.

David White v. E*Trade Securities, LLC

Case No. 21-00374

Jackson, Mississippi

Hearing Dates: Decision on the papers

Award Date: June 17, 2021

Counsel:

Counsel for Claimants:

Pro Se

Counsel for Respondent:

Meredith F. Hoffman, Esq., E*Trade Securities, LLC, Jersey City, New Jersey

Arbitration Panel:

Karl A. Vogeler, III, Sole Public Arbitrator

Investments at Issue:

The cause of action relates to Claimant's allegation that Respondent failed to execute his order at the original limit price, not the higher trading price that the option was priced at the time.

***458** Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Failure to execute

Relief Requested:

- (1) Compensatory damages of \$37,000.

Award:

- (1) Respondent is liable for and shall pay to Claimant the sum of \$31,135 in compensatory damages.
- (2) Respondent is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 8% per annum from January 27, 2021 until the date of payment of the award.
- (3) FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
- (4) Respondent is liable for and shall pay to Claimant \$600.00 to reimburse Claimant for the filing fee previously paid to FINRA Dispute Resolution Services.
- (5) Any and all claims for relief not specifically addressed herein are denied.

Analysis:

This award is noteworthy because this matter was filed on the papers by a pro se investor and alleged a claim for failure to execute an order at the original limit price and not the higher trading price that the option was priced at the time. Claimant requested \$37,000 and was awarded \$31,135 in compensatory damages. Importantly, this award is evidence of an arbitrator holding a broker dealer liable for its internal failure to meet its obligation to a client even though the account was self-directed.

Sigve Mauritzen v. TD Ameritrade, Inc.

Case No. 21-00416

New York, New York

Hearing Dates: Decided on the papers

Award Date: June 22, 2021

Counsel:

Counsel for Claimants:

Pro se

Counsel for Respondent:

Amanda Wright, TD Ameritrade, Inc., Omaha Nebraska

Arbitration Panel:

Arthur Neil Tolciss, Sole Public Arbitrator

***459** Investments at Issue:

The causes of action relate to Luckin Coffee stock.

Claimant's Claims:

Causes of Action in Statement of Claim:

(1) Breach of fiduciary duty;

(2) Negligence

Respondent's Counter-claims:

(1) Breach of client agreement

Relief Requested:

Claimant Requested:

(1) Compensatory damages in the amount of \$12,800 and other monetary relief of \$1,544.

Respondent Requested in Counterclaim:

(1) \$4,800 in compensatory damages.

Award:

(1) Claimant's claims are denied in their entirety;

(2) Claimant is liable for and shall pay to Respondent the sum of \$4,800 in compensatory damages;

(3) Any and all claims for relief not specifically addressed herein are denied;

(4) Claimant is liable for and shall pay to Respondent \$525.00 to reimburse Respondent for the Counterclaim filing fee previously paid to FINRA Dispute Resolution Services.

Analysis:

This award is noteworthy because Claimant sued Respondent for breach of fiduciary duty and negligence and the causes of action related to Luckin Coffee stock. Respondent asserted a counterclaim for breach of the client agreement. Claimant's claim was denied, and Claimant was ordered to pay \$4,800 in compensatory damages to Respondent. The provision of the TD Ameritrade client agreement that client breached is not set forth in the award, but it is curious how Claimant could have liability to Respondent as a result of the client agreement which resulted in an award being rendered against Claimant. Perhaps this was a margin debit case, but it is unclear from the award.

***460 Estate of Lance Wynn vs. Jaime M. Westenbarger**

Case No. 21-00797

Detroit, Michigan

Hearing Dates: Decided on the papers.

Award Date: May 14, 2021

Counsel:

Counsel for Claimants:

Daniel J. Broxup, Esq., Mika Meyers PLC, Grand Rapids, Michigan.

Counsel for Respondents:

Pro se

Arbitration Panel:

Sandra Franklin, Sole Public Arbitrator

Investments at Issue:

Forrest Hills, Financial Inc., multiple variable annuities, Benefit Street Partners Realty Trust, American Realty Capital Healthcare Trust, Northstar Realty Finance Corporation, Griffin-American Healthcare REIT III, United Development Funding, ARC Realty Finance Trust and Healthcare Trust Inc.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Common law conversion

- (2) Statutory conversion, MCL 60.29191a

- (3) Common law fraud

- (4) Breach of contract

- (5) Violations of FINRA Rule 3240

- (6) Negligence

- (7) Breach of fiduciary duty

(8) Violations of the Michigan Uniform Securities Act

Relief Requested:

(1) Compensatory damages;

(2) Exemplary damages;

(3) Punitive damages in the amount of at least three times the compensatory; and exemplary damages awarded;

(4) Statutory attorney's fees;

(5) Costs; and

(6) Interest

***461** Relief Requested Post Hearing:

(1) On April 16, 2021 the panel decided the case on the papers and denied Claimant's claims in their entirety in an explained decision stating: Claimant provided no evidentiary proof upon which to grant relief. The bald Statement of Claim is not enough even in default proceedings against Respondent. On April 26, 2021, Claimant filed a request for reconsideration and submitted evidence in support of its claims. Respondent opposed Claimant's request for reconsideration.

Award:

(1) Respondent is liable for and shall pay Claimant the sum of \$160,000, representing the principal amount due under the promissory note dated on or about November 1, 2011 ("Promissory Note").

(2) Respondent is liable for and shall pay Claimant the sum of \$30,066.74, in interest due and owing under the Promissory Note from January 2015 through October 2016.

(3) Respondent is liable for and shall pay Claimant the sum of \$180,000, in treble damages pursuant to [MCL 600.2919a](#) for conversion of the \$60,000 check dated April 18, 2018.

(4) Respondent is liable for and shall pay Claimant the sum of \$28,372.47 in interest from April 2018 through April 2021 on treble damages awarded in paragraph 3 above.

(5) Respondent is liable for and shall pay Claimant the sum of \$69,457.49 in attorney's fees pursuant to [MCL 600.2919a](#).

(6) Any and all claims for relief not specifically addressed herein are denied.

Analysis:

This award is noteworthy because the case was initially dismissed even though the Respondent had defaulted and did not otherwise participate in the arbitration. The arbitrator denied the initial claims because the Claimant did not offer any supporting evidence. Upon Claimant's request for reconsideration and submission of supporting evidence, as well Claimant's submission of additional evidence, which was requested by the arbitrator, the Claimant recovered a substantial award. Ultimately, the Panel found Respondent liable on a promissory note and conversion of a check. The Panel awarded treble damages, attorneys' fees, and costs under Michigan's conversion statute.

***462 Carole Dill Rauf vs. T. Rowe Price Investment Services, Inc., Jennifer Joy Farmer, Romelio Antonio Flores, and Michelle Lane**

Case No 19-03115

Cincinnati, Ohio

Hearing Dates: May 6, 2021 via videoconference

Award Date: May 14, 2021

Counsel:

Counsel for Claimants:

Pro se

Counsel for Respondents T. Rowe Price Investment Services, Inc., Jennifer Joy Farmer, Romelio Antonio Flores:

Daniel J. Donovan, Esq., Donovan & Rainie, LLC, Baltimore, Maryland.

Respondent Michelle Lane:

Did not enter an appearance.

Arbitration Panel:

Lawrence W. Arness, Sole Public Arbitrator

Investments at Issue:

3D Systems, Stratasy, Fidelity Government Cash Reserves and Janus Triton Fund.

Claimant's Claims:

Causes of Action in Statement of Claim:

(1) Unspecified claims for damages for sale and transfer of almost 64 times the amount Claimant had authorized from her Roth IRA account, before returning the funds to her Fidelity account after 17 days.

Relief Requested:

(1) Compensatory damages of \$700.00 for time on telephone calls, \$1,300.00 for letters and postage;

(2) Interest of \$416.93;

(3) FINRA filing fees; and

(4) Punitive damages of \$2,000.

Award:

(1) T. Rowe Price Investment Services is liable for and shall pay to Claimant the sum of \$2,416.93 in compensatory damages.

(2) T. Rowe Price Investment Services is liable for and shall pay to Claimant \$50.00 to reimburse Claimant for the nonrefundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.

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

Explained Decision:

The Arbitrator has made the decision based on the following reasons: This case does not warrant punitive damages as TRPIS attempted to resolve their mistakes and did finally restore Claimant's accounts to the desired actions, albeit only after considerable time, effort, and consternation of Claimant. Claimant appears to not have suffered any additional loss from the loss of use or access to her funds for approximately 17 days, other than her claim of lost interest. This case cried out to be settled as I previously advised the parties. Analysis:

This award is noteworthy because the panel awarded a pro se claimant 100% of the compensatory damages, interest and costs requested, although the Claimant did not appear to have lost money in her investment due to the operational error by T. Rowe Price above the \$416.93 in claimed lost interest. The sole arbitrator, in awarding damages above the lost interest, admonished the Respondent firm for not settling the case earlier stating that "This case cried out to be settled as I previously advised the parties." This result should serve as a warning to parties on both sides of a case that if an arbitrator expresses his or her opinion that a case should be settled, then the prudent thing to do would be to heed this warning. T. Rowe was punished an additional \$2,000 by the award for its failures to heed the arbitrator's warning.

Kendall Charles Montgomery, as Trustee of the Montgomery Children's 1998 Trust and as Independent Executor of the Estate of the Charles Hunter Montgomery, Deceased vs. Morgan Stanley Smith Barney, LLC f/k/a Smith Barney, a Member of Travelers Group

Case No. 20-00456

Houston, Texas

Hearing Dates: April 26-30, 2021 via videoconference

Award Date: May 11, 2021

Counsel:

Counsel for Claimants:

Fred Hagens, Esq., Hagens, Montgomery, Hagens, Houston, Texas and Paul K. Nesbitt, Esq., Kelly, Sutter and Kendrick P.C., Houston, Texas.

***464** Counsel for Respondent:

Jeremy S. Winer, Esq., Morgan Stanley Smith Barney LLC., New York, New York, and Donald Littlefield, Esq., Bressler, Amery and Ross, P.C.

Arbitration Panel:

Thomas A. Martin, Michael Hendrix, Jonathan Charles Day

Investments at Issue:


Beneficiaries claim that Respondent caused them to lose the accumulated cash value of an Aetna Life Insurance and Annuity product.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Breach of Fiduciary Duty;
- (2) Negligence
- (3) Gross negligence;
- (4) Negligent misrepresentation and omissions; and
- (5) Fraudulent concealment.

Relief Requested:

- (1) Unspecified compensatory and exemplary damages;
- (2) Pre-judgment interest;
- (3) Attorneys' fees pursuant to the contract between the parties or pursuant to  Texas Civ. Prac. & Rem. Code § 38.001;

(4) Costs and expenses;

(5) Post-judgment interest; and

(6) Such other and further relief to which Claimants may be justly entitled.

Award:

(1) Respondent is liable for and shall pay to Claimant the sum of \$172,438.00 in compensatory damages.

(2) Respondent is liable for and shall pay Claimant the sum of \$375.00 in costs as reimbursement for the non-refundable portion of the Initial Claim Filing Fee.

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

***465** Analysis:

This award is interesting in that it dispels a common belief that it is difficult to recover for the Estate of a decedent. Here, the Estate brought a claim for recovery on behalf of the intended beneficiaries of a life insurance product. The panel awarded damages of \$172,438 to the Estate reimbursing it for losses to the accumulated cash value of the product. Often Claimant's attorneys are reluctant to bring claims on behalf a deceased client's heirs as there may be a concern that the heirs could be seen as "greedy." This award shows that a FINRA recovery by the Estate is possible where there is mismanagement by the firm resulting in losses to the Estate.

Daniel P. Freebery vs. Fidelity Brokerage Services LLC, Jeffrey Paytas, Nathaniel J. Wright

Case No. 20-01948

Wilmington, Delaware (Main case decided on the papers)

Hearing Dates (expungement) March 12, 2021

Award Date: April 13, 2021

Counsel:

Counsel for Claimants:

Pro se

Counsel for Respondent Fidelity Brokerage Services LLC:

Noah D. Sorkin, Esq., FMR LLC Legal Department, Boston, Massachusetts.

Counsel for Respondent Jeffery Paytas and Nathaniel J. Wright:

Joel M. Everest, Esq. Bressler, Amery & Ross, P.C., Birmingham, Alabama.

Arbitration Panel:

Robert E. Anderson, Sole Public Arbitrator

Investments at Issue:

Failure to execute a stop loss order in unspecified securities

Claimants' Claims:

Causes of Action in Statement of Claim:

(1) Breach of Fiduciary Duty;

(2) Negligence; and

(3) Trade execution error.

Relief Requested:

(1) Compensatory damages of \$50,000.

Relief Requested Post Hearing:

Expungement requested by Respondents Jeffery Paytes and Nathaniel J. Wright.

***466** Award:

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

(2) The Arbitrator recommends the expungement of all references to the above captioned arbitration (Occurrence Number 2083099) from registration records maintained by the CRD for Respondent Jeffery Paytas (CRD Number 5874660) with the understanding that, pursuant to Notice to Members 04-16, Respondent Jeffery Paytas must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The Arbitrator recommends the expungement of all references to the above captioned arbitration (Occurrence Number 2082959) from registration records maintained by the CRD for Respondent Nathaniel J. Wright (CRD Number 5530889) with the understanding that, pursuant to Notice to Members 04-16, Respondent Nathaniel J. Wright must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

(3) 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 Arbitrator has made the following Rule 2080 affirmative finding of fact: The claim, allegation, or information is factually impossible or clearly erroneous.

(4) The Arbitrator has made the above Rule 2080 finding based on the following reasons: Claimant filed this simplified arbitration to recover the sum of \$50,000.00. According to his filing, this was half of what he stated was the loss in his portfolio attributable to the individual brokers' failure to heed his instructions to protect his portfolio from a market decline from \$480,000 to below \$430,000 during the COVID related precipitous break of March 2020. While all involved acknowledge Claimant's concern about limiting potential losses and had discussions about taking a more defensive posture starting early in March of 2020 (at which time his account was at \$450,000), what Claimant is essentially arguing is that the equivalent to an automatic stop loss order should have been placed in his portfolio to preserve this \$430,000 'floor.' Since Claimant had a managed account containing mutual funds, the managers could not make any adjustments outside a very narrow band and did not have the discretion to make wholesale changes without authorization. The account only marginally dropped below \$430,000.00 on March 11, 2020. On March 13, 2020, a Friday, Claimant's account was valued at some ***467** \$420,000.00. On Monday March 16, 2020, Claimant had a long conversation with Respondents Jeffery Paytas and Nathaniel J. Wright to discuss specific steps to implement a more conservative strategy, which was in process when he transferred the account away on March 23, 2020. At that time, the account had a value of some \$380,000.00. As stated above, there was no cognizable 'stop loss' or other liquidation instruction on the account at the time of the market drop in March 2020. At best, the client's interest was to re-balance it if it fell below the level discussed with his account managers.

(5) By reason of the foregoing, these occurrences should be expunged on the ground that they are clearly erroneous. A 'stop loss' order is not possible in a managed account, and Claimant's advisors made every effort to discuss with him, on multiple occasions, various strategies to minimize his portfolio loss in a very difficult and turbulent market.

(6) FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.

(7) Respondent Fidelity Brokerage Services LLC is liable for and shall pay to Claimant \$300.00 to reimburse Claimant for one-half of the filing fee previously paid to FINRA Dispute Resolution Services.

(8) Any and all claims for relief not specifically addressed herein are denied.

Analysis:

This award may have had a different outcome were it not brought by a pro se claimant. The expungement award found that the parties agreed that the Claimant expressed concern about limiting potential losses and that he had discussions about taking a more defensive posture starting early in March of 2020 (at which time his account was at \$450,000). The sole arbitrator's award denying his claims seemed to be based upon the premise that a 'stop loss' order is not possible in a non-discretionary managed account containing mutual funds. Had the Claimant been represented by counsel, perhaps his claim could have better articulated the cause of action or facts supporting his case. Sole arbitrator cases on the papers are often difficult to win. Add to that a pro se claimant against two seasoned defense attorneys, and the odds are stacked in the Respondents' favor.

***468 Estate of Joseph A. Muff vs. Hartford Funds Distributors, LLC and Woodbury Financial Services, Inc.**

Case No. 19-02405

Des Moines, Iowa

Hearing Dates: June 30, 2021 - July 2, 2021 and July 8, 2021 via videoconference

Award Date: August 11, 2021

Counsel:

Counsel for Claimant:

Gail E. Boliver, Esq., Boliver Law Firm, Marshalltown, Iowa.

Counsel for Respondent Hartford Funds Distributors, LLC ("Hartford"):

John B. Ashley, Esq., Hartford Funds Distributors, LLC, Wayne, Pennsylvania

Counsel for Respondent Woodbury Financial Services, Inc. ("Woodbury"):

Gregory M. Curley, Esq., Advisor Group, Inc., Jersey City, New Jersey.

Arbitration Panel:

Jack D. Elmquist, Alain Frecon, Michael Anthony Pysno

Investments at Issue:

The causes of action relate to Claimant's allegation that Hartford permitted an individual to impersonate Mr. Muff and withdraw a large sum from the Hartford Core Equity Fund, which was the sole product in Claimant's SEP IRA account, and failed to comply with investor protection requirements. Further, Claimant alleged that Woodbury, despite having received statements from Hartford showing the large withdrawals and having knowledge of the withdrawals, took no action to contact Mr. Muff.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Claimant requested damages of over \$282,000.00;
- (2) Punitive damages;
- (3) Costs;
- (4) Expert fees; and
- (5) Such other damages as the Panel finds just and equitable.

Additional Relief Sought at Hearing:

- (1) Claimant requested damages of many multiples of \$282,000.00, as requested in the Amended Statement of Claim, up to \$648,000.00.

***469** Award:

- (1) Respondents are liable jointly and severally for and shall pay to Claimant the sum of \$100,000 in compensatory damages.

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

Analysis:

This award stands out because it awards damages to the Estate of the account holder for the theft from the decedent's SEP account by an imposter. The account holder did not testify prior to his death. (Although not in the award, the attorney for Claimant has reported that the imposter, who was the account holder's stepson, pled guilty to impersonating the account holder via telephone by using his personal confidential information. A transcript of the stepson's sentencing hearing was used at the arbitration hearing.) The panel imposed damages against both the broker dealer Respondent as well as the fund which released the money to the imposter. Again, this award dispels the notion that panels are loathe to award damages to the heirs of a deceased account holder.

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