

RECENT ARBITRATION AWARDS

Melanie Cherdack, Esq. and Sara Hanley, Esq.

This issue's featured arbitration awards include the first case in which a sole FINRA arbitrator awarded damages to a Robinhood customer as a result of the trading restrictions it put in place during the January 28, 2021 "short squeeze" of meme stocks. This section also discusses an award dismissing a U5 expungement claim based upon a defamatory comment placed on the broker's CRD at the time of her termination --more than six years prior to the filing of the FINRA expungement action. Both of these arbitration awards seem to open the door to similar rulings by arbitration panels. One, seeming to invite more Robinhood trading restriction arbitrations and the other encouraging parties to raise the eligibility rule in opposition to expungement claims. Also, we discuss a large UBS YES award, signaling a big win in an environment where many similar cases have resulted in disappointing outcomes. Included in the below discussion is a paper case brought by an investor rights clinic awarding the Claimant \$1 more in compensatory damages than the amount sought, as well as prejudgment interest and costs.

Jose Batista v. Robinhood Financial, LLC, Robinhood Securities, LLC and Robinhood Markets, Inc.

Case No. 21-01206

Hartford, Connecticut

Hearing Date: December 13, 2021

Award Date: January 5, 2022

Counsel:

Counsel for Claimants:

August M. Iorio, Esq., Iorio Altamirano LLP, New York, New York

Counsel for Respondent Robinhood Financial, LLC and Robinhood Securities, LLC:

Dominick F. Evangelista, Esq., Bressler, Amery & Ross, P.C.,
Florham Park, New Jersey

Respondent Robinhood Markets, Inc. did not enter an appearance as it is not a member firm

Arbitration Panel:

John James McGovern, Jr., Public Arbitrator

Investments at Issue:

The causes of action relate to Respondents placing trade restrictions on numerous stocks on January 28, 2021, including, but not limited to “KOSS” and “EXPR” on its trading platforms in the midst of an unprecedented stock rise.

Claimant’s Claims:**Causes of Action in Statement of Claim:**

- (1) Breach of contract;
- (2) Breach implied covenant of good faith and fair dealing;
- (3) Negligence;
- (4) Breach of fiduciary duty;
- (5) Unjust enrichment;
- (6) Non-disclosure or concealment;
- (7) Intentional interference with prospective economic advantage;
- (8) Negligence interference with prospective economic advantage;
- (9) Violations of 15 U.S.C. §78

Relief Requested:

- (1) Compensatory damages of at least \$32,428.00;
- (2) Pre- and Post-Judgment interest;
- (3) Costs;
- (4) Attorneys’ fees;
- (5) Expert fees;
- (6) Forum fees; and
- (7) Punitive damages

Relief Requested At Hearing:

- (1) Compensatory damages in the amount of \$39,761.98;
- (2) Pre-judgment interest at the statutory rate in Connecticut or California of 10%;
- (3) Attorneys’ fees in the amount of \$14,401.46;
- (4) Estimated forum fees in the amount of \$962.50;
- (5) Post-judgment interest at the rate of 10%;
- (6) Discovery sanctions; and
- (7) Punitive damages

Award:

- (1) Respondents Robinhood Financial, LLC and Robinhood Securities, LLC are jointly and severally liable for and shall pay to Claimant the sum of \$29,460.77 in compensatory damages.
- (2) Respondents Robinhood Financial, LLC and Robinhood Securities, LLC are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 10% per annum from January 28, 2021 through and including December 10, 2021.

- (3) Respondents Robinhood Financial, LLC and Robinhood Securities, LLC are jointly and severally liable for and shall pay to Claimant \$150.00 to reimburse Claimant for the non-refundable portion of Claimant's filing fee previously paid to FINRA Dispute Resolution Services.
- (4) Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

Analysis:

This is the first Robinhood case which awarded damages to a Claimant customer for its alleged improper placement of trading restrictions on meme stocks on January 28, 2021 as a result of the short squeeze. The one-person panel rejected the defenses raised by Robinhood, including those relating to the customer agreement or contract. This award could open up the door to many other such claims arising out of the trading restrictions imposed by Robinhood as a result of the short squeeze and meteoric rise of meme stocks.

Joel D. Zychick, Trustee of the GST Trust U/W Irving Siegel and Joel D. Zychick, Trustee of the QTIP Trust U/W Irving Siegel v. UBS Financial Services, Inc.

Case No. 20-00459

Boca Raton, FL

Hearing Dates: January 11-14, 2022; January 19, 2022

Denver, Colorado

Award Date: February 2, 2022

Counsel:

Counsel for Claimants:

Jeffrey B. Kaplan, Esq., Dimond Kaplan & Rothstein P.A., Miami, Florida.

Counsel for Respondent:

Patrick M. Smith, Esq. and Timothy White, Esq., Katten Muchin Rosenman LLP, Los Angeles, California.

Arbitration Panel:

Robert Steven Haught, Presiding Chairperson, Marsha Matson, Public Arbitrator, Randy Atlas, Public Arbitrator

Investments at Issue:

The causes of action relate to Claimants' investment in the Yield Enhancement Strategy ("YES") with Respondent.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Fraud;
- (2) Misrepresentation;
- (3) Unsuitability;
- (4) Unsuitable product;
- (5) Breach of fiduciary duty;
- (6) Negligence and breach of contract, under the federal securities laws, FINRA regulations, Florida securities statutes and applicable common law;
- (7) Respondeat superior;
- (8) Control person liability; and
- (9) Failure to supervise

Award:

- (1) Respondent is liable for and shall pay to Claimant GST the sum of \$517,020.80 in compensatory damages.
- (2) Respondent is liable for and shall pay to Claimant GST pre-judgment interest on the above-stated sum in the amount of \$49,118.52. Post judgment interest shall accrue pursuant to the Code of Arbitration Procedure ("Code").
- (3) Respondent is liable for and shall pay to Claimant QTIP the sum of \$1,171,124.80 in compensatory damages.
- (4) Respondent is liable for and shall pay to Claimant QTIP pre-judgment interest on the above-stated sum in the amount of \$111,260.36. Post judgment interest shall accrue pursuant to the Code.
- (5) Claimants' request for punitive damages is denied.
- (6) Respondent is liable for and shall pay to Claimants the sum of \$600.00, representing reimbursement of the non-refundable claim filing fee previously paid by Claimants to FINRA Dispute Resolution Services.
- (7) Respondent is liable for and shall pay to Claimants the sum of \$26,512.50 representing reimbursement of expert witness fees.
- (8) Respondent's request for expungement of this matter on behalf of Unnamed Parties Monty Cerf (CRD Number 2269462) (Occurrence Number 2065855) and Matthew Buchsbaum (CRD Number 2220565) (Occurrence Number 2065245) are denied.
- (9) Any and all claims for relief not specifically addressed herein, including any requests for attorneys' fees, are denied.

Analysis:

A number of UBS Yes cases have gone to hearing with mixed results. This award, giving the Claimants a large percentage of their requested compensatory damages, plus prejudgment interest and expert witness fees, is a decisive win for the Claimant investors.

Emily Jing Chang v. J.P. Morgan Securities, LLC

Case No. 21-01836

San Francisco, California

Hearing Dates: December 8, 2021 (prehearing conference)

Award Date: December 22, 2021

Counsel:

Counsel for Claimant:

Michelle Atlas, Esq. HLBS Law, Westminster, Colorado

Counsel for Respondent:

Shipra K. Rege, Esq., Ulmer & Berne LLP, Cleveland, Ohio

Arbitration Panel:

Jonathan Pollard, Sole Public Arbitrator

Investments at Issue:

The cause of action was for expungement of Claimant's CRD record

Claimants' Claims:

Causes of Action in Statement of Claim:

Expungement of the Form U5 amendments corresponding with Occurrence Number 1693571, and those relevant portions of the Form U4 from Claimant's CRD records on the basis that the statement is defamatory in nature, misleading, inaccurate, and/or erroneous, to include:

- (1) Amendment of the Reason for Termination entry in Section 3 of Claimant's Form U5 to read "Voluntary";
- (2) Expungement of the Termination Explanation from Claimant's Form U5;
- (3) Amendment of the answer to question 7F(1) on Claimant's Form U5, from a "Yes" response to "No";
- (4) Deletion of the Termination Disclosure Detail (U4) from the CRD, including: deletion of the Termination Type; deletion of the Explanation for the termination; and deletion of the Allegation(s) associated with the termination;

- (5) Deletion of the Termination Disclosure Detail (U5) from the CRD, including: deletion of the Termination Type; deletion of the Explanation for the termination; and deletion of the Allegation(s) associated with the termination; and
- (6) Deletion of the Termination Disclosure Reporting Page accompanying Occurrence Number 1693571 from the CRD;

Relief Requested:

- (1) Compensatory damages of \$1; and
- (2) Any and other relief that the arbitration panel deems just and equitable.

Dispositive Motion:

On September 30, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 13206 of the Code of Arbitration Procedure ("Code"). On October 18, 2021, Claimant filed a response opposing the Motion to Dismiss. On October 22, 2021, Respondent filed a reply in support of the Motion to Dismiss. On December 8, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss.

Award:

- (1) Claimant's claims are dismissed without prejudice, pursuant to FINRA Rule 13206.

Findings:

Rule 13206(a) states: "No claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. The panel will resolve any questions regarding the eligibility of a claim under this rule."

The "occurrence or event giving rise to" Claimant's expungement request was the disclosure of Claimant's termination on Claimant's Form U5. This occurred on February 21, 2014, which is more than six years before Claimant filed her Statement of Claim. Therefore, based on the expressed language of Rule 13206, Claimant's expungement claim is ineligible for arbitration.

Claimant attempts to get around application of Rule 13206 to her claim by contending that either the occurrence or event is continuing because allegedly derogatory information continues to appear on the BrokerCheck website, or alternatively, that the "occurrence or event" again occurred when access to the BrokerCheck website was enhanced in 2016.

The Arbitrator does not find either argument persuasive. If the continued presence of the allegedly derogatory information on the BrokerCheck website constituted a continuing violation, then Rule 13206 would never bar expungement actions. Further, the enhancements to the BrokerCheck website in 2016 do not constitute an "event or occurrence" under Rule 13206 because Respondent took no further action in 2016 with respect to Claimant's U5.

The authorities cited in Respondent's moving papers and reply support the Arbitrator's determination that the "occurrence or event" triggering the claim for expungement in this case was the submission of the Form U5 by Respondent to the CRD records. Since that event occurred more than six years before Claimant filed this arbitration, Respondent's motion to dismiss is granted.

Analysis:

This reasoned award is of import because the sole arbitrator barred Claimant's requests for expungement under FINRA's six-year eligibility rule. The ruling was based on the fact that the arbitrator found the "occurrence or event giving rise to" Claimant's expungement request was the initial disclosure of her termination on Claimant's Form U5 on February 21, 2014--which was more than six years before Claimant filed her Statement of Claim. The arbitrator rejected Claimant's argument that the occurrence or event is continuing because the allegedly derogatory information continues to appear on the BrokerCheck website, or alternatively, that the "occurrence or event" again occurred when access to the BrokerCheck website was enhanced in 2016. This award might be used to prevent arbitrators from expunging complaints or termination comments from a broker's CRD where the initial reporting took place more than six years prior to the filing of the expungement action.

Aron Greenstein v. Steven Novick

Case No. 21-02032

New York, New York

Hearing Date: N/A (paper case)

Award Date: February 7, 2022

Counsel:

Counsel for Claimants:

Christine Lazaro, Esq., St. John's University School of Law Securities
Arbitration Clinic, Queens, New York

Counsel for Respondent:

Pro se

Arbitration Panel:

Phillip Weitzman, Sole Public Arbitrator

Investments at Issue:

The causes of action relate to the overcharge in fees of \$4,999 due to the switch of Claimant's account from a standard brokerage account to an investment advisory account.

Claimant's Claims:**Causes of Action in Statement of Claim:**

- (1) Breach of fiduciary duty;
- (2) Misrepresentations and omissions;
- (3) Violations of industry rules; and
- (4) Violations of Connecticut state law

Relief Requested:

- (1) Compensatory damages of \$1,931.02, which represents the overcharge in fees due to the switch from a standard brokerage account to an investment advisory account or (b) \$4,999.00, which represents most of the \$5,100.00 for managerial fees from the second quarter of 2014 to fourth quarter of 2019, which were retroactively deducted, and the \$275.58 for managerial fee for the first quarter of 2020, which was deducted a day before Respondent removed himself from Claimant's account;
- (2) Interest pursuant to Connecticut General Statute § 37-3a;
- (3) Attorney's fees;
- (4) Costs;
- (5) Expenses; and
- (6) Forum fees

Respondent's Counterclaim:

- (1) Compensatory damages in the amount of \$5,110.72;
- (2) Interest;
- (3) Attorneys' fees;
- (4) Written retraction of all of the grievances filed against Respondent and other non-parties;
- (5) Such additional and further relief as deemed appropriate.
- (6) On November 18, 2021, Respondent clarified the nature of relief sought and requested that Claimant pay in full to have Respondent's Form U4 expunged pursuant to FINRA Rule 2080, this claim falls under the permissible grounds for expungement as follows: (C) the claim, allegation or information is false.

Award:

- (1) Respondent is liable for and shall pay to Claimant the sum of \$5,000.00 in compensatory damages plus interest at the rate of 10% per annum from December 16, 2020, until date of this award.
- (2) Respondent's Counterclaim is denied.
- (3) Respondent's request for expungement of his CRD records is denied.
- (4) FINRA Dispute Resolution Services shall retain the \$175.00 filing fee that Claimant deposited previously.
- (5) FINRA Dispute Resolution Services shall retain the \$325.00 filing fee that Respondent deposited previously.
- (6) Respondent is liable for and shall pay to Claimant \$175.00 to reimburse Claimant for the filing fee previously paid to FINRA Dispute Resolution Services.
- (7) Any and all relief not specifically addressed herein, including requests for retraction and attorneys' fees are denied.

Analysis:

This paper case was a home run for the St. John's Securities Arbitration Clinic. The one-person panel rejected the counterclaim raised by the Respondent awarding Claimant \$1 more than the \$4,999 compensatory damages sought, plus 10% percent statutory interest and the FINRA filing fee, to make the Claimant whole.

Marjorie L. Ullerich v. Independent Financial Group, LLC, Royal Alliance Associates, Inc., and Gardner Financial Services, Inc.

Case No. 21-00296

Minneapolis, Minnesota

Hearing Dates: January 10-13, 2022

Award Date: January 21, 2022

Counsel:

Counsel for Claimants:

F. Chet Taylor, Esq., Aries Legal, PLC, Minneapolis, Minnesota

Counsel for Respondent:

Benjamin J. Biard, Esq., Winget Spadafora & Schwartzberg, LLP,
Miami, Florida

Arbitration Panel:

Michael S. Jordan, Public Arbitrator, Presiding Chairperson, Phyllis Karasov, Public Arbitrator, Alain Frecon, Public Arbitrator

Investments at Issue:

Fraudulent conduct and mishandled investments

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Common law claims for fraud;
- (2) Conversion;
- (3) Breach of fiduciary duty;
- (4) Violation of Minn. Stat. § 45.026 and Minn. Rule 2876.5024;
- (5) Violation of Minn. Securities Act;
- (6) Violation of Minn. Stat. § 80A.68 and §80A.76;
- (7) Violation of Minn. Rules 2876.5021 & 2876.5023;
- (8) Violation of the Minn. Civil Theft Statute, Minn. Stat. §604.14;
- (9) Violation of Minn. Prevention of Consumer Fraud, Minn. Stat. § 325F.68;
- (10) Violation of Minn. Deceptive Trade Practices Act, Minn. Stat. § 325D.44 and Minn. Stat. § 8.31;
- (11) Violation of Minn. Prevention of Deceptive Acts Against Vulnerable Persons Statute, Minn. Stat. §325F.71;
- (12) Violation of various FINRA Conduct Rules, including FINRA Rule 2010, rules prohibiting the sale of unsuitable investments, rules requiring strong supervision of salesperson, including supervision of their outside business activities and private securities transaction, rules prohibiting "selling away" and unauthorized trading, rules banning conflict of interest, and rules requiring fair dealing with customers and respondeat superior.

Relief Requested:

- (1) Compensatory damages of more than \$500,000 but less than \$100,000;
- (2) Pre and post judgment interest;
- (3) Statutory penalties;
- (4) Punitive damages;
- (5) Costs;
- (6) Expert witness fees;
- (7) Attorneys' fees; and
- (8) Such other and further relief as the Panel deems to be fair and reasonable.

Relief Requested Post Hearing:

- (1) Compensatory damages of \$638,526.75, which included \$34,444.44 for theft of monies and interest in the amount of \$21,374.50 at the rate of 10% from October 27, 2015 to January 10, 2022;
- (2) Civil penalties of \$10,000 and \$34,444.44 pursuant to Minn. Stat. § 325F.71, subd. 2(a) and §604.14, subd. 1;

- (3) \$119,000 for breach of contract;
- (4) \$100,000 for attorneys' fees; and
- (5) \$319,263.38 for punitive damages.

Award:

- (1) IFG is liable for and shall pay to Claimant the sum of \$100,000 in compensatory damages.
- (2) IFG is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 10% per annum from and including January 13, 2022 through the date the Award is paid in full.
- (3) IFG is liable for and shall pay to Claimant the sum of \$425.00 in costs as reimbursement of the non-refundable portion of the filing fee.
- (4) IFG is liable for and shall pay to Claimant the sum of \$70,000.00 in attorneys' fees pursuant to Minn. Stat. § 80A.76, § 325F.68-70, and § 325F.71.
- (5) Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

Analysis:

This award is noteworthy because of the large amounts awarded in excess of the compensatory damages. Claimant, a 77 year old widow, sought to recover certain sums, including \$34,444.44 stolen by her broker. The firm defended the case arguing that it was not responsible, blaming the victim for the loss. In rejecting this defense, the panel awarded her compensatory damages of \$100,000, as well as \$70,000 in attorneys' fees, plus post-judgment interest and costs.

John Elliott v. TD Ameritrade Clearing, Inc. and TD Ameritrade, Inc.

Case No. 20-00400

Denver, Colorado

Hearing Dates: August 30-31, 2021 and September 1-3, 2021

Award Date: September 29, 2021

Counsel:

Counsel for Claimants:

Matthew R. Lewis, Esq., Kunzler Bean & Adamson, PC, Salt Lake City, Utah

Counsel for Respondent:

Eric A. Bensky, Esq. and Alexandra Marinzal, Esq., Murphy & McGonigle, P.C., Washington, District of Columbia.

Arbitration Panel:

Ruth M. Moore, Public Arbitrator, Presiding Chairperson, Marilyn R. Lewis, Public Arbitrator, Rick Gale Doty, Public Arbitrator

Investments at Issue:

Options and various securities held in Claimant's Portfolio Margin account

Claimants' Claims:**Causes of Action in Statement of Claim:**

- (1) Breach of contract;
- (2) Breach of express warranties;
- (3) Breach of covenant of good faith and fair dealing;
- (4) Unauthorized trading; and
- (5) Negligence

Relief Requested:

- (1) Restitution;
- (2) Compensatory damages; and
- (3) Equitable and other relief, which could include specific performance (return of liquidated securities, cash and lost dividends), in excess of \$8 million and in an amount to be proven at the hearing in this matter.

Relief Requested in Amended Statement of Claim:

- (1) Compensatory damages, totaling in excess of \$8 million, including:
 - a. Money at the current valuation on date of judgment to repurchase Equity and ETF positions that were illegally liquidated and/or specific return of those securities, totaling \$5,093,543.63 as of May 31, 2020;
 - b. plus, lost dividends on the elements in item (a) to the date of judgement;(As of May 31, 2020, those actual dividends total \$160,255.05)
 - c. plus, money used by Respondents in its liquidation, totaling \$2,953,524.54; and
 - d. minus, money representing the value of options that expired in-the-money, netting out to \$152,253.64 (an offsetting amount to the other values); and
- (2) Punitive damages

Relief Requested Post Hearing:

- (1) \$10,880,456.84 on his claim for negligence;
- (2) \$11,843,852.72 on his claim for breach of contract;
- (3) Return of cash and securities in Claimant's account on his claim for rescission; and
- (4) Such other relief the Panel deems just and equitable.

Award:

- (1) Respondents are jointly and severally liable and shall pay to Claimant the sum of \$2,082,148.30 in compensatory damages.
- (2) Respondents' Counterclaim is denied.
- (3) Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

Analysis:

This award is noteworthy because Claimant sought \$8-\$10 million in damages as a result of an alleged improper and unauthorized liquidation of securities and exchange traded funds in his Portfolio Margin Account. The arbitrators awarded \$2,082,143 versus the damages requested at the final hearing of approximately \$10.8-\$11.8 million dollars requested post hearing. This case is also interesting because Claimant filed a Motion for Partial Summary Judgment. The Panel heard oral arguments on Claimant's Motion and ultimately denied it. Claimant also filed a written objection to certain statements made during Respondents' closing argument and the Panel ultimately overruled Claimant's objection.

Brian Leggett and Bryson Holdings, LLC v. Wells Fargo Clearing Services, LLC and Jay Windsor Pickett III

Case No. 17-01077

Atlanta, Georgia

Hearing Dates: September 24 - 27, 2018 and June 24 - 28, 2019

Award Date: July 30, 2019

Counsel:**Counsel for Claimants:**

Jeffrey D. Horst, Esq., Krevolin & Horst, LLC, Atlanta, Georgia and
Craig H. Kulgar, Esq., Law Office of Craig Kuglar, LLC Atlanta,
Georgia

Counsel for Respondent:

Jay Windsor Pickett III, Esq., Terry R. Weiss, Esq. and Stephanie M.
Wayco, Esq., DLA Piper LLP, Atlanta Georgia

Arbitration Panel:

Robert L. Lestina, Jr., Public Arbitrator, Presiding Chairperson, Charles
E. White, Public Arbitrator, Scott A. Schweber, Public Arbitrator

Investments at Issue:

Claimants alleged that Respondent Wells Fargo Clearing Services, LLC failed to adequately train, monitor and supervise two of its representatives and the representatives mismanaged Claimants' account.

Claimants' Claims:**Causes of Action in Statement of Claim:**

- (1) Negligence;
- (2) Violation of the Georgia Uniform Securities Act of 2008;
- (3) Failure to Supervise;
- (4) Churning;
- (5) Breach of Fiduciary Duty;
- (6) Breach of Contract;
- (7) Breach of Implied Warranty of Good Faith and Fair Dealing;
- (8) Respondeat Superior;
- (9) Violation of SEC and FINRA Rules, as well as securities laws.

Relief Requested:

- (1) Compensatory damages in the amount no less than \$1,500,000;
- (2) Interest;
- (3) Attorneys' fees;
- (4) Costs and expenses;
- (5) Under-performance damages;
- (6) Consequential damages;
- (7) Punitive damages;
- (8) Interest at the legal rate on all sums recovered;
- (9) and such other and further relief deemed just and appropriate by the Panel.

Relief Requested Post Hearing:

- (1) \$1,178,446.78 in realized losses;
- (2) \$272,407.44 in commissions, margin interest and fees;
- (3) \$68,218.58 in costs and arbitration expenses; and
- (4) \$433,770.00 in attorneys' fees.

Award:

- (1) Claimants' claims are denied in their entirety.
- (2) Claimant Leggett is liable and shall pay to Respondents the sum of \$51,000, representing costs incurred by Respondents in connection with this matter.
- (3) Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and attorneys' fees, are denied.

- (4) The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD, for Respondent Pickett (CRD No.2041509) and Non-Party McKelvey (CRD No.5288433), with the understanding that, pursuant to Notice to Members 04-16, Respondent Pickett and Non-Party McKelvey must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Analysis:

This award is noteworthy because it has now been vacated by a Georgia Superior Court Judge who found that Respondents' counsel received an unfair advantage during the arbitrator ranking process in this arbitration. The outcome of this award was that Claimants' claims were dismissed and Claimants were ordered to pay Respondents' costs, despite Respondents' Motion to Amend their Statement of Answer to request Attorney's Fees and Costs being denied by the Panel. Furthermore, the claim was expunged from the record of the associated person and a FINRA registered representative who was a non-party to the case. The panel found that the losses sustained by Claimants were solely caused by the trading strategy devised, implemented, and undertaken by Claimant Leggett. The Panel found that neither Respondent Pickett nor Non-Party McKelvey engaged in any wrongful conduct. The Panel found that their decision to grant the expungement requests of Non-Party McKelvey and Respondent Pickett is buttressed by the Panel's conclusion that Claimant Leggett was not a credible witness, and his complaints about Non-Party McKelvey and Respondent Pickett were false and untrue.

Elizabeth B. Snyder, individually and as Trustee of Elizabeth B. Snyder Revocable Trust U/A/D/8/18/1999 Amended and Restated 3/6/2012, as Managing Member of Linkster Holdings, LLC, and on behalf of Elizabeth Snyder IRA vs. J.P. Morgan Securities, LLC, Deutsche Bank Securities, Inc., Montecito Advisors, Inc. and Barry Snyder

Case No. 18-03816

Boca Raton, Florida

Hearing Dates: August 2-6, 2021 (partially via videoconference)

Award Date: September 27, 2021

Counsel:

Counsel for Claimants:

Robert Wayne Pearce, Esq., Robert Wayne Pearce, P.A., Boca Raton, Florida.

Counsel for Respondent:

Eugene L. Small, Esq., Eugene L. Small, P.C., New York, New York,
Allan N. Taffet, Esq., Bracewell LLP, New York, New York, Neil S.
Baritz, Esq., Baritz & Colman, LLP, Boca Raton, Florida.

Respondent Montecito Advisors, Inc. did not appear.

Arbitration Panel:

Sidney J. Wartel, Public Arbitrator, Presiding Chairperson, Andrea R.
Jacobs, Public Arbitrator, Stephen John Gohlke, Public Arbitrator

Investments at Issue:

The causes of action related to Claimants' traded securities through the
use of margin, day trading, and short sales, as well as investments in
stocks, such as Habitat Restaurants, Inc. and Global Eagle Entertainment,
Inc.

Claimants' Claims:

Causes of Action in Statement of Claim:

- (1) Common law fraud;
- (2) Constructive fraud;
- (3) Negligent misrepresentation;
- (4) Breach of fiduciary duty;
- (5) Negligent management;
- (6) Negligent supervision;
- (7) Fraudulent concealment.

Relief Requested:

- (1) Compensatory damages in an amount to be determined;
- (2) Market-adjusted and lost opportunities damages;
- (3) Interest on their claim from the time thus accrued;
- (4) Punitive damages in an amount to be determined;
- (5) And all other costs and expenses, including legal fees.

Relief Requested Post Hearing:

- (1) During the opening presentation, Claimants requested \$5,143,779
inclusive of pre-judgment interest in the amount of \$1,050,712.
- (2) At the conclusion of the hearing, Claimant requested that the Panel
deduct from its compensatory damage award the settlement amounts
(which were disclosed to the Panel) with Respondent J.P. Morgan and
Deutsche.

Award:

- (1) Respondent B. Snyder is liable for and shall pay to Claimants the sum of \$2,554,896 in compensatory damages.
- (2) Claimants' request for pre-judgment interest is denied.
- (3) Respondent B. Snyder is liable for and shall pay to Claimants post-judgment interest at the Federal Reserve interest rate to commence thirty (30) days after entry of the final Award.
- (4) Any and all claims for relief not specifically addressed herein, including any requests for attorney's fees, punitive damages and treble damages, are denied.

Analysis:

This award is noteworthy because the panel found the individual broker, Barry Snyder, individually liable for the losses caused to his ex-wife, Elizabeth Snyder. The panel assessed these damages even after a deduction of the settlements amounts paid by the two Respondent brokerage firms. The losses were incurred in large part as a result of an overconcentration in one stock—a restaurant chain--- that failed. The broker also day traded the action resulting in additional damages. This award highlights shows that a panel will still hold a broker liable for losses even after the brokerage firms have settled the claims on their own behalf.