

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Paul J. Wurm and Evelyn Wurm,
Individually and as JTWROS

Case Number: 17-00265

vs.

Respondents

Berthel Fisher & Company
Financial Services, Inc.,
National Planning Corp.,
Christopher L. Hasbrouck,
Christopher R. Olson, and
Jarrod B. Kittleson

Hearing Site: Minneapolis, Minnesota

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Members and Associated Persons

REPRESENTATION OF PARTIES

For Claimants Paul J. Wurm and Evelyn Wurm, individually and as JTWROS (collectively, “Claimants”): Bradford M. Gucciardo, Esq., Gucciardo Law Group, P.A., Lakewood Ranch, Florida.

For Respondent National Planning Corporation (“NPC”): John Rock, Esq., Rock Hutchison, PLLP, Minneapolis, Minnesota.

For Respondents Berthel Fisher & Company Financial Services, Inc. (“BFC”), Christopher L. Hasbrouck (“Hasbrouck”), and Jarrod B. Kittleson (“Kittleson”): Cory D. Olson, Esq., Anthony Ostlund Baer & Louwagie P.A., Minneapolis, Minnesota.

Respondent Christopher R. Olson (“Olson”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: February 1, 2017.
Claimants signed the Submission Agreement: January 31, 2017.

Statement of Answer filed by NPC on or about: April 13, 2017.
NPC signed the Submission Agreement: April 12, 2017.

Statement of Answer filed by BFC, Hasbrouck, and Kittleson on or about: April 13, 2017
BFC, Hasbrouck, and Kittleson signed the Submission Agreement: April 12, 2017.

Olson did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: common law fraud, breach of fiduciary duty, negligence (gross negligence), and breach of contract. The causes of action related to allegations that NPC, BFC, and their representatives invested Claimants' retirement savings in unsuitable investments, including United Development Funding IV, an Inland Western Real Estate Investment Trust, the Divided Capital Total Realty Operating Partnership LP, and a Jackson National Variable Annuity.

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested damages of approximately \$500,000.00; punitive damages of \$250,000.00; pre-award and post-award interest at the legal rate; all costs and fees incurred in this action, including all forum fees, expert witness-related fees, and attorneys' fees; and such further relief as the Panel deems just and appropriate.

In the Statement of Answer, NPC requested that the Panel deny Claimants' Statement of Claim in all respects and dismiss it with prejudice; assess against Claimants all forum fees, costs, and expenses; and award NPC such other and further relief as the Panel deems just and equitable.

In the Statement of Answer, BFC, Hasbrouck, and Kittleson requested that Kittleson be immediately dismissed from the case pursuant to FINRA Rule 12506(a)(6)(B); that the claims against Hasbrouck and BFC be denied in full and on the merits; that the Panel award them with all costs and expenses, including FINRA filing, hearing fees, surcharges, and reasonable attorneys' fees incurred in defending this matter; and such other and further relief as the Panel deems just under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel acknowledges having read the pleadings and other materials filed by the parties.

Olson did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

On July 26, 2017, NPC filed a Motion to Dismiss ("Motion to Dismiss") pursuant to Rules 12504 and 12206 of the Code of Arbitration Procedure ("Code"). On September 20, 2017, Claimants

filed an Opposition to the Motion to Dismiss. On October 4, 2017, NPC filed a Reply in Support of its Motion to Dismiss. On October 25, 2017, the Panel heard oral arguments on the Motion to Dismiss. In an Order dated October 27, 2017, the Panel denied the Motion to Dismiss.

On September 18, 2019, Claimants dismissed all claims against NPC with prejudice.

On August 18, 2021, Claimants filed a notice of settlement of their claims against BFC and Hasbrouck and withdrawal with prejudice of their claims against Kittleson. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against BFC, Hasbrouck, or Kittleson.

On August 19, 2021, Claimants filed a Motion to Commence Default Proceedings as to Olson Pursuant to Rule 12801 of the Code ("Motion for Default"), to which no response was filed. Pursuant to Rule 12801 of the Code, the Chairperson appointed in this matter became the sole arbitrator to consider Claimants' Motion for Default.

AWARD

After considering the pleadings and all submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 1,725.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred the refundable portion of Claimant's filing fee in the amount of \$ 1,300.00. Upon conclusion of the matter, the Arbitrator determined to assess the fee.

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, NPC and BFC are each assessed the following:

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

Postponement Fees

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

June 18, 2018, postponement requested by Claimants	= \$	1,300.00
October 28-October 31, 2019 postponement requested by Claimants	= \$	1,300.00
July 7-July 9, 2021, postponement requested by Claimants, BFC, Hasbrouck, and Kittleson		WAIVED
September 8-September 10, 2021 postponement requested by Claimants	= \$	1,300.00
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Total Postponement Fees	= \$	3,900.00

The Arbitrator has assessed \$1,950.00 of the postponement fees jointly and severally to Claimants.

The Arbitrator has assessed \$650.00 of the postponement fees to NPC.

The Arbitrator has assessed \$1,300.00 of the postponement fees jointly and severally to BFC, Hasbrouck, and Kittleson.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	400.00
NPC submitted one (1) discovery-related motion		
BFC submitted one (1) discovery-related motion		

Total Discovery-Related Motion Fees	= \$	400.00
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The Arbitrator has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Arbitrator has assessed \$200.00 of the discovery-related motion fees jointly and severally to, NPC, BFC, Hasbrouck, and Kittleson.

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with one Arbitrator @ \$250.00	= \$	250.00
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Total Contested Motion for Issuance of Subpoena Fees	= \$	250.00
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The Arbitrator has assessed the total contested motion for issuance of subpoena fees jointly and severally to Claimants.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: May 24, 2018	1 session	
Six (6) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	7,800.00
Pre-Hearing Conferences: June 13, 2017	1 session	
October 25, 2017	1 session	
June 14, 2018	1 session	
August 19, 2019	1 session	
May 4, 2020	1 session	
April 20, 2021	1 session	
Decision on the papers:	= \$	300.00
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Total Hearing Session Fees	= \$	8,550.00

The Arbitrator has assessed \$3,775.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$2,062.50 of the hearing session fees to NPC.

The Arbitrator has assessed \$2,712.50 of the hearing session fees jointly and severally to BFC, Hasbrouck, and Kittleson.

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

ARBITRATOR

Mark S. Gleason

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Mark S. Gleason

10/27/2021

Mark S. Gleason
Sole Public Arbitrator

Signature Date

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October 27, 2021

Date of Service (For FINRA Dispute Resolution Services use only)