

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Patty Berryhill, Winn King, and Edwina Downum

Case Number: 17-01065

vs.

Respondents

PFS Investments Inc., Richard Kyle Taylor,
Perry De Leeuw, and Nancy Elaine De Leeuw

Hearing Site: Dallas, Texas

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. Member and Associated Persons
Member vs. Associated Persons

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Patty Berryhill (“Berryhill”), Winn King (“King”), and Edwina Downum (“Downum”) (collectively “Claimants”): Micah L. Satterwhite, Esq., Sloan, Hatcher, Perry, Runge, Robertson, Smith & Jones, Longview, Texas.

For Respondent PFS Investments Inc. (“PFS”): Brett A. Rogers, Esq. and Cameron B. Roberts, Esq., Rogers & Hardin LLP, Atlanta, Georgia.

For Respondent Richard Kyle Taylor (“Taylor”): Bryan T. Forman, Esq., Forman Law Firm PC, Tyler, Texas.

Respondents Perry De Leeuw (“P. De Leeuw”) and Nancy Elaine De Leeuw (“N. De Leeuw”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: April 27, 2017.

Amended Statement of Claim filed on or about: June 18, 2019.

Claimants signed the Submission Agreement: April 26, 2017.

Statement of Answer and Cross Claim filed by PFS on or about: July 10, 2017.

PFS signed the Submission Agreement: July 10, 2017.

Taylor, P. De Leeuw, and N. De Leeuw did not file Statements of Answer or sign Submission Agreements.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: fraud, violations of the Texas Deceptive Trade Practices Act, breach of fiduciary duty, fraud by nondisclosure, negligent misrepresentation, respondeat superior, negligent hiring, negligent supervision, negligent retention, and negligent training. The causes of action related to Claimants' allegations that Taylor, P. De Leeuw, and N. De Leeuw induced Berryhill and King to invest in WaterBos, which turned out to be a sham founded to defraud investors. Claimants also alleged that Taylor, P. De Leeuw, and N. De Leeuw induced Downum to invest in Teddy Tots and to open a bank account and have all statements sent to them. Further, Claimants alleged that Downum later learned that the account was overdrawn, there had been many transactions without her knowledge, and P. De LeeuwN. De LeeuwTeddy Tots had no money left.

In the Amended Statement of Claim, Claimants asserted the following causes of action: fraud, breach of fiduciary duty, fraud by nondisclosure, negligent misrepresentation, and breach of FINRA securities laws and regulations. The causes of action related to Claimants' allegation that Berryhill and King were induced to invest in WaterBos before learning that the company was a sham founded to defraud investors. Claimants also alleged that Downum was induced to invest in Teddy Tots and to open a bank account for the business that was controlled by P. De Leeuw and N. De Leeuw. Further, Claimants alleged that Downum later learned that the account was overdrawn, that P. De Leeuw and N. De Leeuw had used much of the funds for their living and personal expenses, and that Teddy Tots had no money left.

Unless specifically admitted in the Statement of Answer and Cross Claim, PFS denied the allegations made in the Statement of Claim and asserted various affirmative defenses. PFS asserted the following causes of action: contribution/indemnification, breach of contract, and fraud and deceit. PFS alleged that Taylor, P. De Leeuw, and N. De Leeuw had an obligation, under Texas Law and the terms of their agreement, to indemnify and hold harmless PFS from any losses and harm to third parties.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested economic damages, damages for mental anguish, and exemplary damages.

In the Amended Statement of Claim, Claimants requested an Award against P. De Leeuw and N. De Leeuw as follows:

- a) Berryhill's economic damages in the amount of \$250,000.00, as well as pre- and post-judgment interest;
- b) King's economic damages in the amount of \$250,000.00, as well as pre- and post-judgment interest;
- c) Downum's economic damages in the amount of \$548,000.00, as well as pre- and post-judgment interest;
- d) Mental anguish damages, within the Panel's discretion;
- e) Exemplary damages, within the Panel's discretion;

- f) Attorneys' fees in prosecuting this matter and costs of arbitration, including forum fees; and
- g) All such other and further relief as Claimants may show themselves justly entitled.

In the Statement of Answer and Cross Claim, PFS requested that Claimants' claims be dismissed with prejudice, that it be compensated for its attorneys' fees and other expenses of litigation, that all forum fees in this matter be assessed against Claimants, and that PFS be granted such further relief as the Panel deems just and proper. Further, PFS requested that the Panel enter a final arbitration award and judgment against Taylor, P. De Leeuw, and N. De Leeuw on all counts in the Cross Claim, including injunctive relief.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On August 14, 2017, Claimants filed a dismissal of their claims against Taylor with prejudice. On August 17, 2017, PFS filed a dismissal of its cross claims against Taylor. Therefore, the Panel made no determination with respect to the claims against Taylor.

On October 18, 2017, at the Initial Prehearing Conference, the Panel questioned the service on P. De Leeuw and N. De Leeuw. In an Order dated the same day, the Panel determined that service was not sufficient as to P. De Leeuw and N. De Leeuw and directed Claimants and PFS to provide proof of service on P. De Leeuw and N. De Leeuw.

On July 30, 2018, PFS filed a Motion for Pre-Hearing Conference, Severance, and Case Management Order ("Motion to Sever"). On August 9, 2018, Claimants filed a Response to the Motion to Sever. On August 13, 2018, PFS filed a Reply in Support of the Motion to Sever.

On August 15, 2018, Claimants filed a notice of settlement with PFS. Therefore, the Panel made no determination with respect to the claims against PFS, and the Motion to Sever was moot.

On August 27, 2018, PFS filed a notice of dismissal without prejudice of its cross claims against P. De Leeuw and N. De Leeuw. Therefore, the Panel made no determination with respect to PFS's claims against P. De Leeuw and N. De Leeuw.

On June 18, 2019, Claimants filed a Motion to Amend Statement of Claim. In an Order dated July 3, 2019, the Panel granted Claimants' Motion to Amend Statement of Claim.

In an Order dated January 16, 2020, the Panel reaffirmed the October 18, 2017 Order and directed Claimants to provide evidence of compliance by February 17, 2020 in order to avoid dismissal for lack of prosecution. On February 17, 2020, Claimants filed a response, noting their efforts to comply with the Panel's directives.

The Panel issued additional Orders, dated March 1, 2020, May 11, 2020, June 19, 2020, July 22, 2020, and October 5, 2020, each directing Claimants to provide periodic updates regarding their efforts to serve P. De Leeuw and N. De Leeuw. In response to these Orders, Claimants filed additional notices on April 29, 2020, June 10, 2020, July 20, 2020, September 21, 2020, and December 4, 2020, regarding the status of their efforts to comply with the Panel's directives.

In an Order dated December 21, 2020, the Panel directed Claimants to undertake additional and more extensive actions to effect service and to provide an update to the Panel by February 15, 2021. The Panel stated that, in the event service was not effected by that date, the case may be dismissed with or without prejudice. On February 15, 2021, Claimants filed notice of their continuing inability to serve P. De Leeuw and N. De Leeuw and requested an additional two months to effect service (“Motion”).

Herein, the Panel denies Claimants’ Motion and dismisses this case without prejudice on the following grounds:

As documented by several reports to the Panel throughout the history of the case, Claimants have not been able to effect service on P. De Leeuw and N. De Leeuw and, therefore, have been unable to prosecute this case.

The Award in this matter may be executed in counterpart copies.

AWARD

The Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants’ claims against P. De Leeuw and N. De Leeuw are dismissed without prejudice.

FEES

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$	2,000.00
Cross Claim Filing Fee	= \$	1,700.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, PFS is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	6,175.00

Postponement Fees

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

August 27-30, 2018, postponement requested by Claimant	= \$	1,125.00
<hr/> Total Postponement Fees	= \$	1,125.00

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the postponement fees to PFS.

Hearing Session Fees and Assessments

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

One (1) pre-hearing session with the Panel @ \$1,400.00/session	= \$	1,400.00
Pre-Hearing Conference: October 18, 2017	1 session	
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Total Hearing Session Fees	= \$	1,400.00

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to PFS.

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

ARBITRATION PANEL

Joseph Neal Richardson	-	Public Arbitrator, Presiding Chairperson
Edward S. Koppman	-	Public Arbitrator
Ann Blaess Kimball	-	Non-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.

Concurring Arbitrators' Signatures

Joseph Neal Richardson

Joseph Neal Richardson
Public Arbitrator, Presiding Chairperson

03/03/2021

Signature Date

Edward S. Koppman

Edward S. Koppman
Public Arbitrator

03/03/2021

Signature Date

Ann Blaess Kimball

Ann Blaess Kimball
Non-Public Arbitrator

03/03/2021

Signature Date

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March 03, 2021

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