

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Jerome Kemper,  
Mark Kringen,  
Kari Kringen,  
Peggy Monette,  
Steven Siness,  
Elaine Siness  
Larry Grondahl,  
Connie E. Living Trust,  
Connie Lee TTEE,  
Donald Lee TTEE,  
Kenneth Kuhn,  
Kristine Kuhn,  
Clinton Rasmussen,  
Pamela Rasmussen,  
Gregory Heller,  
and Vickie Heller

Case Number: 17-02822

vs.

Respondents

Lebenthal & Co., LLC,  
Alexandra Lebenthal,  
James B. Lebenthal,  
and Myles Blechner, and  
Lebenthal Wealth Advisors, LLC,

Hearing Site: Bismarck, North Dakota

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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, Associated Persons, and Non-Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Jerome Kemper (“Kemper”), Mark Kringen and Kari Kringen (“Kringen”), Peggy Monette (“Monette”), Steven Siness and Elaine Siness (“Siness”), Larry Grondahl (“Grondahl”), Connie E. Lee Living Trust (“Lee Trust”), Connie Lee TTEE (“C. Lee”), Donald Lee TTEE (“D.

Lee”), Kenneth Kuhn and Kristine Kuhn (“Kuhn”), Clinton Rasmussen and Pamela Rasmussen (“Rasmussen”), Gregory Heller and Vickie Heller (“Heller”), collectively, “Claimants”: Brandon S. Reif, Esq. and Rachel D. Dardashti, Esq., Reif Law Group, P.C., Los Angeles, California. \*

For Respondents Lebenthal & Co., LLC (“Leb & Co”), Alexandra Lebenthal (“A. Lebenthal”), James B. Lebenthal (“J. Lebenthal”), and Myles Blechner (“Blechner”), collectively referred to as “Respondents”: Daniel R. Korb, Jr., Esq. and Kathryn B. Rockwood, Esq., Bressler, Amery & Ross, PC, Florham Park, New Jersey.

Respondent Lebenthal Wealth Advisors LLC (“LWA”) did not appear.

\*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

### **CASE INFORMATION**

Statement of Claim filed on or about: November 13, 2017.  
Claimants signed the Submission Agreement: October 19, 2017.

Statement of Answer filed by Respondents on or about: February 2, 2018.  
Leb Co. signed the Submission Agreement: April 16, 2018.  
A. Lebenthal signed the Submission Agreement: April 16, 2018.  
J. Lebenthal signed the Submission Agreement: April 18, 2018.  
Blechner signed the Submission Agreement: January 26, 2018.

LWA 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: negligent misrepresentations and omissions, breach of fiduciary duty, violation of FINRA Rule 2111, negligent due diligence, fraud, and unethical business practices in violation of North Dakota Securities Act of 1951 Section 10-04-03(2). The causes of action relate to Claimants’ allegations that Respondents and LWA breached their duty to perform reasonable due diligence prior to approving and then recommending Aequitas Notes, a high-risk non-conventional investment (“NCI”) to retail clients such as themselves. Claimants further allege that the Respondents were negligent in performing their supervisory duties in regard to the offering of NCIs to retail investors.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested an Award, jointly and severally, against Respondents as follows:

- a. On behalf of Kemper, rescission of the investment or, in the alternative, compensatory damages in the amount of \$100,000.00.
- b. On behalf of Kringen, rescission of the investment or, in the alternative, compensatory damages in the amount of \$250,000.00.
- c. On behalf of Monette, rescission of the investment or, in the alternative, compensatory damages in the amount of \$100,000.00.
- d. On behalf of Sinness, rescission of the investment or, in the alternative, compensatory damages in the amount of \$100,000.00.
- e. On behalf of Grondahl, rescission of the investment or, in the alternative, compensatory damages in the amount of \$100,000.00.
- f. On behalf of Lee Trust, rescission of the investment or, in the alternative, compensatory damages in the amount of \$250,000.00.
- g. On behalf of Kuhn, rescission of the investment or, in the alternative, compensatory damages in the amount of \$100,000.00.
- h. On behalf of Rasmussen, rescission of the investment or, in the alternative, compensatory damages in the amount of \$100,000.00.
- i. On behalf of Heller, rescission of the investment or, in the alternative, compensatory damages in the amount of \$100,000.00.
- j. Punitive or exemplary damages against Lebenthal & Co., LWA, A. Lebenthal and J. Lebenthal in the sum of \$790,000.00.
- k. Pre-award and post-award interest at the maximum amount allowed by law from the date of the original investments until the Award is paid in full.
- l. Arbitration costs including all forum fees and filing fees.
- m. Expert witness fees and costs to be determined.
- n. Any other fees and costs the panel deems just and proper.

In the Statement of Answer, Respondents requested that all claims be dismissed with prejudice, with the costs associated with the arbitration proceeding assessed against Claimants, and that all references to this matter be expunged from Blechner's Central Registration Depository ("CRD") registration records.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

LWA is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against LWA.

On September 22, 2020, Respondents filed a Motion for Sanctions and Other Appropriate Relief (“1<sup>st</sup> Motion for Sanctions”). On October 16, 2020, Claimants filed a response in opposition to the 1<sup>st</sup> Motion for Sanctions. On October 21, 2020, Respondents filed a reply in support of the 1<sup>st</sup> Motion for Sanctions. In an Order dated November 24, 2020, the Panel granted the 1<sup>st</sup> Motion for Sanctions.

On March 1, 2021, the Lee Trust filed a Motion for Reconsideration of the Panel’s Orders dated November 24, 2020, December 14, 2020, January 8, 2021, and January 29, 2021, which found violations of Rule 12209 and granted the 1<sup>st</sup> Motion for Sanctions (“Motion for Reconsideration”). On March 11, 2021, Respondents filed a response in opposition to the Motion for Reconsideration. On March 16, 2021, the Lee Trust file a reply in support of their Motion for Reconsideration. On March 17, 2021, Respondents filed a sur-reply to the Motion for Reconsideration. In an Order dated, March 24, 2021, the Panel denied the Motion for Reconsideration.

On June 4, 2021, Respondents filed a Second Motion for Sanctions and Other Appropriate Relief Pursuant to Rule 12212 (“2<sup>nd</sup> Motion for Sanctions”). On June 21, 2021, the Lee Trust filed an Opposition to the 2<sup>nd</sup> Motion for Sanctions. On June 28, 2021, Respondents filed a Reply in Support of their 2<sup>nd</sup> Motion for Sanctions. In an Order dated July 7, 2021, the Panel granted the 2<sup>nd</sup> Motion for Sanctions.

On October 29, 2021, Claimants filed a notice of settlement and voluntary dismissal with prejudice of the entire arbitration action pursuant to the parties’ settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against the Respondents.

On November 16, 2021, Blechner filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on December 8, 2021, so the parties could present oral argument and evidence on Blechner’s request for expungement.

Neither Claimants nor Claimants’ counsel participated in the expungement hearing. The Panel found that Claimants had notice of the expungement hearing.

The Panel reviewed Blechner’s BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, found that there were no monetary payments made by Blechner, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Blechner's testimony at the December 8, 2021 hearing; Respondents' post-hearing submission, dated January 6, 2022; Blechner and others' testimonies, including the Claimants' testimonies during the hearing sessions conducted from February 20-28, 2020; and Blechner's BrokerCheck® Report.

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

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 1967829) from registration records maintained by the CRD for Respondent Myles Reid Blechner (CRD Number 2709013) with the understanding that, pursuant to Notice to Members 04-16, Respondent Myles Reid Blechner 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, 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:

In his position as compliance officer, Blechner's duties involved procedure and process, not substantive advice or decision-making regarding specific investments. The Panel found no basis to believe Blechner was involved in the sales of the investments at issue or any investment-related sales practice. He never had any contact whatsoever with the Claimants until the start of the evidentiary hearing in February 2020. As Blechner is a compliance professional, he has never given investment advice. The Panel finds the allegations against Blechner to be factually impossible, clearly erroneous, and false.

The Panel noted that the Claimants did not oppose Blechner's Motion for Expungement. The Claimants dismissed their claims against all Respondents after a settlement agreement was executed.

The Panel examined the settlement agreement in its totality. The Panel determined that there was no compensation paid by Blechner and that he did not condition the settlement on any customer's agreement to consent to or not to oppose his request for expungement. None of the language in the settlement agreement prevents any of the parties from being available and able to present factual testimony in connection with any expungement request.

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 = \$ 2,000.00

*\*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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Lebenthal & Co. is assessed the following:

Member Surcharge = \$ 3,025.00  
Member Process Fee = \$ 6,175.00

#### **Postponement Fees**

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

September 16-21 and 23-2, 2019, postponement requested by Respondents = \$ 1,400.00

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Total Postponement Fees = \$ 1,400.00

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

The Panel has assessed \$700.00 of the postponement fees jointly and severally to Leb & Co., A. Lebenthal, and J. Lebenthal.

#### **Discovery-Related Motion Fees**

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

Four (4) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 800.00

Four (4) decisions on discovery-related motions on the papers = \$ 2,400.00

with the Panel @ \$600.00/decision

Claimants submitted one (1) discovery-related motion  
Respondents submitted seven (7) discovery-related motions

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Total Discovery-Related Motion Fees = \$ 3,200.00

The Panel has assessed \$2,000.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$1,200.00 of the discovery-related motion fees jointly and severally to Leb & Co., A. Lebenthal, and J. Lebenthal.

**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:

Eight (8) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 11,200.00

Pre-Hearing Conferences:

April 13, 2018	1 session
April 17, 2019	1 session
September 23, 2019	1 session
June 15, 2020	1 session
August 11, 2020	1 session
November 23, 2020	1 session
February 1, 2021	1 session
June 30, 2021	1 session

Eighteen (18) hearing sessions @ \$1,400.00/session = \$ 25,200.00

Hearings:

February 20, 2020	2 sessions
February 21, 2020	2 sessions
February 22, 2020	2 sessions
February 23, 2020	2 sessions
February 24, 2020	2 sessions
February 25, 2020	2 sessions
February 26, 2020	2 sessions
February 27, 2020	2 sessions
February 28, 2020	2 sessions

One (1) hearing session on expungement request @ \$1,400.00/session = \$ 1,400.00

Hearing: December 8, 2021 1 session

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Total Hearing Session Fees = \$ 37,800.00

The Panel has assessed \$21,700.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,100.00 of the hearing session fees to the Lee Trust.

The Panel has assessed \$8,400.00 of the hearing session fees jointly and severally to Leb & Co., A. Lebenthal, and J. Lebenthal.

The Panel has assessed \$1,400.00 of the hearing session fees to Blechner.

The Panel waived \$4,200.00 of the hearing session fees.

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



**ARBITRATION PANEL**

P J Boylan	-	Public Arbitrator, Presiding Chairperson
Herbert Liberman	-	Public Arbitrator
Ilene T. Gormly	-	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**

***P J Boylan***

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P J Boylan  
Public Arbitrator, Presiding Chairperson

**01/24/2022**

\_\_\_\_\_  
Signature Date

***Herbert Liberman***

\_\_\_\_\_  
Herbert Liberman  
Public Arbitrator

**01/24/2022**

\_\_\_\_\_  
Signature Date

***Ilene T. Gormly***

\_\_\_\_\_  
Ilene T. Gormly  
Public Arbitrator

**01/24/2022**

\_\_\_\_\_  
Signature Date

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.

January 25, 2022

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