

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

John Mugan
Susan Tutundjian-Mugan
Ann Tutundjian

Case Number: 18-00048

vs.

Respondent

David Lerner Associates, Inc.

Hearing Site: Boca Raton, Florida

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

This case was decided by an all-public panel.

The expungement hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants John Mugan, Susan Tutundjian-Mugan and Ann Tutundjian: Stefan M. Apotheke, Esq., Erez Law, PLLC, Miami, Florida.

For Respondent David Lerner Associates, Inc.: Riccardo DeBari, Esq. and Michael G. Shannon, Esq., Thompson Hine LLP, New York, New York.

*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: January 4, 2018.

John Mugan signed the Submission Agreement: December 22, 2017.

Susan Tutundjian-Mugan signed the Submission Agreement: December 22, 2017.

Ann Tutundjian signed the Submission Agreement: December 22, 2017.

Statement of Answer filed by Respondent on or about: March 19, 2018.

David Lerner Associates, Inc. signed the Submission Agreement: January 26, 2018.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission. The causes of action relate to Claimants' investments in Puerto Rico bonds.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: damages in the amount of \$500,000.00 to \$1,000,000.00; punitive damages; interest; costs; attorneys' fees; and such other and further relief this Panel deemed just and proper.

In the Statement of Answer, Respondent requested: dismissal of the Statement of Claim in its entirety with prejudice; denial of any recovery by Claimants against Respondent; assessment of all forum fees and costs solely against Claimants; expungement of customer dispute information from registration records maintained by the Central Registration Depository ("CRD") for Unnamed Parties Scott Cory Ente ("Ente") and Julie Anne Morowitz ("Morowitz"); and such other relief as the Panel deemed just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about December 4, 2020, Claimants filed with FINRA Dispute Resolution Services a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On or about December 4, 2020, Respondent filed with FINRA Dispute Resolution Services a notice of settlement and requested that the file remain open in order for the Panel to consider a request for expungement.

On or about December 22, 2020, Respondent filed a Motion for Expungement on behalf of Unnamed Parties Ente and Morowitz, to which no response was filed.

The Panel conducted a recorded hearing via videoconference on January 14, 2021, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Parties Ente and Morowitz.

Claimants did not participate in the expungement hearing and did not oppose the expungement request. The Panel found that the Claimants had notice of the expungement request and hearing.

The Panel reviewed the BrokerCheck® Reports for Unnamed Parties Ente and Morowitz. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, 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 and that Unnamed Parties Ente and Morowitz did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Respondent's Motion for Expungement on behalf of Unnamed Parties Ente and Morowitz, along with its Exhibits.

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 1966600 from registration records maintained by the CRD for Unnamed Party Ente (CRD Number 2612038) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Ente must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel recommends the expungement of all references to the above-captioned arbitration/Occurrence Number 1966656 from registration records maintained by the CRD for Unnamed Party Morowitz (CRD Number 1470359) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Morowitz 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 of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative findings of fact:

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:

Claimants inherited a substantial bond portfolio upon the death of a relative. Claimants maintained a non-discretionary account with Respondent. The questioned securities were suitable at the time of the inheritance and were presumptively suitable when Claimants opened new accounts with Respondent. Claimants made additional purchases of the questioned securities which were suitable at the time of the purchase. Respondent made

no unsuitable recommendations to either purchase or hold the questioned securities, and Claimants made any such decisions themselves.

Unnamed Party Ente was the Claimants' investment counselor. The allegations of sales practice violations made against Unnamed Party Ente are false (FINRA Rule 2080(b)(1)(C)).

Unnamed Party Morowitz is a registered assistant investment counselor, who worked with Unnamed Party Ente to administer Claimants' accounts. Unnamed Party Morowitz was not involved in the investment related sales practice violations alleged by Claimants, and the allegations of sales practice violations made against Unnamed Party Morowitz are false (FINRA Rules 2080(b)(1)(B) and 2080(b)(1)(C)).

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

**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, Respondent is 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:

February 10-14 and 18-19, 2020, postponement requested by Respondent = \$ 1,300.00

June 1-5, 2020, postponement requested by parties = \$ 1,300.00

Total Postponement Fees = \$ 2,600.00

The Panel has assessed \$650.00 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,950.00 of the postponement fees to Respondent.

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:

Four (4) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$ 5,200.00
Pre-hearing Conferences: May 7, 2018	1 session
February 11, 2020	1 session
June 25, 2020	1 session
November 10, 2020	1 session
One (1) hearing session on expungement request @ \$1,300.00/session	= \$ 1,300.00
Hearing Date: January 14, 2021	1 session
<hr/> Total Hearing Session Fees	<hr/> = \$ 6,500.00

The Panel has assessed \$2,600.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$3,900.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Richard W. Epstein	-	Public Arbitrator, Presiding Chairperson
Meah Rothman Tell	-	Public Arbitrator
Marvin S. Lava	-	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

Richard W. Epstein

Richard W. Epstein
Public Arbitrator, Presiding Chairperson

01/21/2021

Signature Date

Meah Rothman Tell

Meah Rothman Tell
Public Arbitrator

01/21/2021

Signature Date

Marvin S. Lava

Marvin S. Lava
Public Arbitrator

01/21/2021

Signature Date

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January 21, 2021

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