

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Frank Augustine Cuenca
Timothy Charles Sullivan

Case Number: 18-00573

vs.

Respondents

SII Investments, Inc.
National Planning Holding LLC
National Planning Holding Company
Jackson National Insurance Company

Hearing Site: San Francisco, California

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: Associated Persons vs. Member and Non-Members

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Frank Augustine Cuenca (“Cuenca”), and Timothy Charles Sullivan (“Sullivan”): Frank F. Sommers, Esq., Sommers Law PC, San Francisco, California.

Hereinafter, Cuenca and Sullivan are collectively referred to as “Claimants”.

For Respondents SII Investments, Inc. (“SII Investments”) and National Planning Holding LLC (“National Planning”): Chad E. Weaver, Esq. and Elizabeth A. Lowery, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

Respondents National Planning Holding Company (“National Planning Holding Company”) and Jackson National Insurance Company (“Jackson National”) did not enter appearances in this matter.

CASE INFORMATION

Statement of Claim filed on or about: February 12, 2018.

Claimants’ Answer to the Amended Statement of Answer and Counterclaim filed on or about: June 21, 2019.

Amended Statement of Claim filed on or about: August 24, 2020.

Claimants signed the Submission Agreement: February 14, 2018.

Statement of Answer filed by SII Investments on or about: April 16, 2018.

Amended Statement of Answer and Counterclaim filed by SII Investments on or about: June 13, 2019.

Amended Counterclaim filed by SII Investments and National Planning on or about: September 22, 2020.

SII Investments signed the Submission Agreement: April 16, 2018.

National Planning signed the Submission Agreement: October 14, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: injunctive relief; expungement; violation of FINRA Rule 2010; breach of contract; wrongful termination; interference with contract and prospective advantage; and fraud.

In the Amended Statement of Claim, Claimants asserted the following causes of action: injunctive relief; breach of contract; breach of covenant of good faith and fair dealing; interference with contract and prospective advantage; intentional misrepresentation; intentional fraud; promise without intention to perform; failure to disclose material facts; and defamation. The causes of action relate to alleged improper withholding of compensation and wrongful termination.

In the Amended Statement of Answer and Counterclaim, SII Investments denied the allegations made in Claimants' Amended Statement of Claim and asserted various affirmative defenses. Further, SII Investments asserted a counterclaim for indemnity against Claimants in connection with an underlying FINRA arbitration ("Underlying Arbitration").

In the Answer to the Amended Statement of Answer and Counterclaim, Claimants denied the allegations made by SII Investments and asserted various affirmative defenses.

In the Amended Counterclaim, SII Investments and National Planning asserted a cause of action for indemnity against Claimants. The cause of action relates to an amount paid in connection with the Underlying Arbitration.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimants requested:

1. Injunctive relief;
2. Compensatory damages in excess of \$11,600,000.00;
3. Punitive damages;
4. Attorney's fees;
5. Costs; and
6. Such other relief as the Panel deems just and proper.

In the Amended Statement of Answer, SII Investments requested:

1. Dismissal of Claimants' Statement of Claim against SII Investments with prejudice and without costs;
2. Costs;
3. An award of any amounts paid by SII in the Underlying Arbitration, including

- reimbursement of any settlement, attorneys' fees and costs that may be incurred by SII Investments in defending against and resolving the matter; and
4. Such other and further relief as the Panel deems just and proper.

In Claimants' Answer to the Amended Statement of Answer and Counterclaim, Claimants requested:

1. Dismissal of SII Investment's added counterclaim with prejudice, and denial of any alleged costs;
2. All fees and costs incurred as a result of SII Investment's added counterclaim to be assessed solely against SII Investments, as mandated pursuant to FINRA Rule 13303(d); and
3. Any and all other relief that the Panel deems just and equitable.

In the Amended Counterclaim, SII Investments and National Planning requested:

1. Each and every claim asserted by Claimants be dismissed, in its entirety; and that any corresponding relief requested, monetary or otherwise, also be denied entirely;
2. An award of the total amount of fees and costs incurred in connection with the defense and settlement of the Underlying Arbitration, as well as pre- and post- award interest thereon;
3. Fees and costs in this arbitration incurred in connection with the indemnity claim, as well as post-award interest thereon;
4. FINRA forum fees to be assessed against Claimants joint and severally;
5. An award containing an order that SII Investments and National Planning be promptly refunded any such fees it has paid; and
5. Such other and further relief as the Panel deems just and proper.

At the hearing, Claimants requested:

1. \$1,553,685.00 in compensatory damages for Cuenca;
2. \$3,815,154.00, \$4,782,300.00, or \$5,583,407.00 in compensatory damages for Sullivan;
3. Injunctive relief to have the Claimants' Form U5 records changed;
4. Forum fees to be assessed against SII Investments and National Planning;
5. Attorneys' fees;
6. Costs; and
7. Punitive damages.

At the hearing, SII Investments and National Planning requested:

1. \$641,615.00 in compensatory damages; and
2. Forum fees to be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

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

National Planning Holding Company and Jackson National are not members or associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against National Planning Holding Company and Jackson National.

On May 6, 2019, SII Investments filed a Motion for Leave to File an Amended Answer to Add a Counterclaim and to Confirm Arbitration Hearing Dates. On May 16, 2019, Claimants filed their response. On May 17, 2019, SII Investments filed its reply. By Order dated June 5, 2019, the Panel granted SII Investments' motion.

On May 22, 2020, SII Investments filed a motion for terminating and monetary sanctions. On June 2, 2020, Claimants filed their response. On June 8, 2020, SII Investments filed its reply. On July 28, 2020, SII Investments filed a supplement to its motion. On July 29, 2020, Claimants filed their objections to SII Investments' supplement. On August 12, 2020, the Panel issued an Order granting SII Investments' motion for monetary sanctions and ordering Claimants to pay \$1,500.00 to SII Investments.

On July 23, 2020, Claimants filed a Motion to Amend their Statement of Claim. On August 3, 2020, SII Investments filed its opposition to Claimants' motion. On August 10, 2020 Claimants filed their reply. By Order dated August 17, 2020, the Panel granted Claimants' motion.

On September 22, 2020, SII Investments filed a motion to amend its Counterclaim. Claimants did not file a response to the motion. On October 12, 2020, the Panel issued an order granting the motion to amend the Counterclaim.

AWARD

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

1. Cuenca's claims are denied in their entirety.
2. SII Investments and National Planning are jointly and severally liable for and shall pay to Sullivan the sum of \$61,274.00 in compensatory damages.
3. SII Investments' and National Planning's Counterclaim is denied.
4. Claimants' request for injunctive relief ordering that SII Investments withdraw its initial U5 for Claimants and file an amended U5 is denied.
5. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

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	= \$	2,250.00
Counterclaim Filing Fee	= \$	4,000.00

**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, SII Investments is assessed the following:

Member Surcharge	= \$	4,025.00
Member Process Fee	= \$	7,000.00

Postponement Fees

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

February 19-22, 2019, postponement requested by SII Investments	= \$	1,500.00
July 15-18, 2019, postponement requested by parties	=	WAIVED
October 8-11, 2019, postponement requested by parties	=	WAIVED
October 19-23, 2020, postponement requested by SII Investments	= \$	1,500.00
November 23-24, 2020, postponement requested by parties	=	WAIVED

Total Postponement Fees	= \$	3,000.00
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The Panel has assessed the total postponement fees to SII Investments.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

November 23-24, 2020, cancellation requested by parties	=	WAIVED
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Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court.

Claimants are assessed:

Injunctive Relief Surcharge	= \$	2,500.00
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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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Seven (7) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	3,150.00
Pre-Hearing Conferences: January 31, 2019	1 session	
April 10, 2019	1 session	
May 9, 2019	1 session	
September 8, 2020	1 session	
September 29, 2020	1 session	
October 12, 2020	1 session	
November 9, 2020	1 session	

Thirteen (13) pre-hearing sessions with the Panel @ \$1,500.00/session		= \$ 19,500.00
Pre-Hearing Conferences:		
July 11, 2018	1 session	
January 23, 2019	1 session	
August 12, 2019	1 session	
April 15, 2020	1 session	
April 23, 2020	1 session	
July 30, 2020	1 session	
August 11, 2020	1 session	
August 17, 2020	1 session	
October 12, 2020	1 session	
October 19, 2020	1 session	
November 17, 2020	1 session	
November 20, 2020	1 session	
December 9, 2020	1 session	

Thirty (30) hearing sessions @ \$1,500.00/session		= \$ 45,000.00
Hearings:		
December 14, 2020	2 sessions	
December 15, 2020	2 sessions	
December 16, 2020	2 sessions	
December 17, 2020	2 sessions	
December 18, 2020	2 sessions	
December 21, 2020	2 sessions	
December 22, 2020	2 sessions	
January 4, 2021	2 sessions	
January 5, 2021	2 sessions	
January 6, 2021	2 sessions	
January 7, 2021	2 sessions	
January 8, 2021	2 sessions	
January 11, 2021	2 sessions	
January 13, 2021	2 sessions	
January 15, 2021	2 sessions	

Total Hearing Session Fees	= \$ 67,650.00
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The Panel has assessed the total hearing session fees jointly and severally to SII Investments and National Planning.

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

ARBITRATION PANEL

Barbara M. Anscher	-	Public Arbitrator, Presiding Chairperson
Thomas Arthur Cohen	-	Public Arbitrator
Christopher Cother Powers	-	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

Barbara M. Anscher

Barbara M. Anscher
Public Arbitrator, Presiding Chairperson

02/18/2021

Signature Date

Thomas Arthur Cohen

Thomas Arthur Cohen
Public Arbitrator

02/17/2021

Signature Date

Christopher Cother Powers

Christopher Cother Powers
Non-Public Arbitrator

02/18/2021

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.

February 18, 2021

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