

Stipulated Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Richard Birney

Case Number: 18-00617

vs.

Respondents
Taylor Capital Management, Inc.
Mark Gregory Raezer
Dennis Mitchell Farrah

Hearing Site: Denver, Colorado

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: Customer vs. Member and Associated Persons

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Richard Birney (“Claimant”): Jeffrey Pederson, Esq., Jeffrey Pederson P.C., Greenwood Village, Colorado.

For Respondent Taylor Capital Management, Inc. (“TCM”): Preston Spears, Taylor Capital Management, Inc., Woodstock, Georgia.

For Respondent Mark Gregory Raezer (“Raezer”): Russell K. Bean, Esq., Beck & Bean, P.C., Aurora, Colorado.

For Respondent Dennis Mitchell Farrah (“Farrah”): Blaine K. Bengtson, Esq., Jones & Keller, P.C., Denver, Colorado.

Hereinafter, Farrah, Raezer, and TCM are collectively referred to as “Respondents.”

CASE INFORMATION

Statement of Claim filed on or about: February 15, 2018.
Claimant signed the Submission Agreement: February 2, 2018.
Claimant's Answer to Counterclaim filed on or about: December 13, 2019.

Statement of Answer filed by TCM on or about: May 9, 2018.
TCM signed the Submission Agreement: May 9, 2018.

Statement of Answer filed by Raezer on or about: March 23, 2018.
Raezer signed the Submission Agreement: March 23, 2018.

Statement of Answer filed by Farrah on or about: April 9, 2018.
Amended Statement of Answer and Counterclaim filed by Farrah on or about: September 3, 2019.
Farrah signed the signed the Submission Agreement: December 10, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; fraud; misrepresentation; negligence; and violation of Colorado securities laws, C.R.S. § 11-51-501 et seq. The causes of action relate to Respondents' alleged sale of unregistered limited partnership securities to Claimant.

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

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

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

In the Counterclaim, Farrah asserted a cause of action for malicious prosecution. The cause of action relates to statements by Claimant to government investigators which allegedly lacked probable cause and were motivated by malice.

In Claimant's Answer to the Counterclaim, Claimant denied the allegations made in Farrah's Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Rescission of the investments, or in the alternative, compensatory damages in an amount not less than \$424,052.00;
2. Consequential damages in an amount according to proof;
3. Disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondents as a result of their unlawful acts and practices in an amount according to proof;
4. Punitive and exemplary damages in an amount to be determined by the Panel;
5. Pre-award and post-award interest at the maximum rate allowed by law from the date of the original investment; and
6. Costs and expenses, including reasonable attorneys' fees, expert witness fees and other costs deemed reasonable.

In its Statement of Answer, TCM requested:

1. Claimant's claims against TCM be dismissed;
2. Entry of an award in favor of TCM; and
3. Costs be assessed against Claimant.

In his Statement of Answer, Raezer did not set forth a specific relief request.

In his Statement of Answer, Farrah requested Claimant's claims against him be dismissed and costs be awarded to him.

In his Amended Answer and Counterclaim, Farrah requested:

1. Compensatory damages;
2. Pre-judgement and post-judgment interest;
3. Attorneys' fees and costs; and
4. Such other and further relief as permitted under the law or that the Panel deems just and proper.

In the Answer to Farrah's Counterclaim, Claimant requested:

1. Farrah's counterclaim be denied and dismissed with prejudice; and
2. Attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 4, 2019, Farrah filed a Motion for Stay of Arbitration Pending Resolution of Criminal Proceedings Against Dennis Farrah. On January 7, 2019, Claimant filed his opposition to Farrah's motion to stay. On January 8, 2019, Raezer and TCM filed motions for joinder to Farrah's motion to stay. On January 11, 2019, Farrah filed a Reply in support of his Motion for Stay of Arbitration Pending Resolution of Criminal Proceedings Against Dennis Farrah. On January 24, 2019, the Panel granted Farrah's motion for stay.

On September 3, 2019, Farrah filed a motion to amend his answer to the Statement of Claim and add counterclaim, to which no response was filed. On September 18, 2019, the Panel granted Farrah's motion to amend his answer and add counterclaim.

On May 25, 2021, Claimant filed a notice of settlement with Respondents and dismissed his claims against Farrah and Raezer. On the same day, Farrah also filed a notice of settlement with Claimant, settling all of his claims against Claimant.

On June 9, 2021, Claimant and TCM filed a Motion for Entry of a Stipulated Award. On June 10, 2021, the Panel granted the motion.

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

AWARD

Claimant and TCM entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of Claimant and TCM for entry of a Stipulated Award, and the written stipulation thereto, the Panel grants the motion and enters this Stipulated Award granting the following relief:

1. TCM is liable for and shall pay to Claimant the sum of \$424,052.00, inclusive of costs and disbursements.
2. Claimant and TCM shall be responsible for their respective attorneys' fees.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

FEES

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

Filing Fees

FINRA Dispute Resolution Services will retain or collect the non-refundable filing fees* for each claim:

Initial Claim Filing Fee	= \$	1,425.00
Counterclaim Filing Fee	= \$	1,575.00

**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, TCM is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

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
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Claimant submitted four (4) discovery-related motions

Total Discovery-Related Motion Fees	= \$	800.00
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The Panel has assessed \$300.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Respondents.

The Panel has assessed \$100.00 of the discovery-related motion fees to TCM.

The Panel has assessed \$200.00 of the discovery-related motions fees to Farrah.

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 Panel has assessed the total contested motion for issuance of subpoena fees to Claimant.

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 @ \$1,125.00/session	= \$	4,500.00
Pre-Hearing Conferences: June 18, 2018	1 session	
January 23, 2019	1 session	
November 7, 2019	1 session	
June 17, 2020	1 session	
Decision on the papers:	= \$	300.00
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Total Hearing Session Fees	= \$	4,800.00

The Panel has assessed \$1,275.00 of the hearing session fees to Claimant.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$150.00 of the hearing session fees to TCM.

The Panel has assessed \$1,125.00 of the hearing session fees to Farrah.

The Panel waived \$1,125.00 of the hearing session fees for the June 17, 2020 pre-hearing conference call.

ARBITRATION PANEL

Steven Meyrich	-	Public Arbitrator, Presiding Chairperson
Ronald G. Guida	-	Public Arbitrator
Rick Gale Doty	-	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

Steven Meyrich

Steven Meyrich
Public Arbitrator, Presiding Chairperson

06/29/2021

Signature Date

Ronald G. Guida

Ronald G. Guida
Public Arbitrator

06/30/2021

Signature Date

Rick Gale Doty

Rick Gale Doty
Public Arbitrator

06/29/2021

Signature Date

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July 01, 2021

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