

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Robert Sagrillo
Diane Sagrillo

Case Number: 18-03495

vs.

Respondents

Cascade Financial Management, Inc.
David John Turner
John Joseph Van Sant

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: Customers vs. Member and Associated Persons

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Robert Sagrillo and Diane Sagrillo (collectively “Claimants”): Jason J. Kane, Esq., Peiffer Wolf Carr Kane Conway & Wise, LLP., Rochester, New York.

For Respondents Cascade Financial Management, Inc. (“Cascade”), David John Turner (“Turner”), and John Joseph Van Sant (“Van Sant”): David Hirschberg, Esq., Wexler Burkhardt Hirschberg & Unger, LLP, Garden City, New York.

Hereinafter, Cascade, Turner and Van Sant are referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: October 5, 2018.

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

Second Amended Statement of Claim filed on or about: August 9, 2019.

Diane Sagrillo signed the Submission Agreement: October 5, 2018.

Robert Sagrillo signed the Submission Agreement: October 5, 2018.

Statement of Answer filed by Respondents on or about: November 30, 2018.

Answer to Second Amended Statement of Claim filed by Respondents on or about: September 11, 2019.

Cascade signed the Submission Agreement: November 1, 2018.
Turner signed the Submission Agreement: November 1, 2018.
Van Sant signed the Submission Agreement: November 1, 2018.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following causes of action: violation of FINRA Rules 2110 and 2111; violation of the Colorado Blue Sky Law; negligence; negligent misrepresentation and omissions of material facts; and breach of fiduciary duty. The causes of action relate to Claimants' investments in Walton Elm Creek Ranch LP, United Development Funding IV ("UDF IV"), and GPB Holdings, LP.

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

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested:

1. Losses of all principal suffered by Claimants;
2. All interest, commissions and fees paid by Claimants;
3. Loss of income that would have been received had Claimants account been managed properly, as well as other losses, foreseeable or not, that Claimants have suffered, including non-pecuniary losses;
4. Attorneys' fees, costs and other expenses;
5. Interest, both pre-judgment and post-judgment;
6. Punitive damages; and
7. All other sums Claimants are entitled to at law or equity.

In the Statement of Answer, as amended, Respondents requested:

1. The claims be dismissed in their entirety;
2. All costs and fees be assessed against Claimants; and
3. All references to this claim be expunged from Respondents' Central Registration Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 18, 2019, Claimants filed a Motion to Amend Statement of Claim. On April 23, 2019, Respondents filed their opposition to the motion. On April 29, 2019, Claimants filed a reply in support of their Motion to Amend Statement of Claim. By order dated, May 5, 2019, the Panel granted Claimants' Motion to Amend Statement of Claim.

On August 9, 2019, Claimants filed a Second Motion to Amend Statement of Claim, to which no response was filed. On August 22, 2019, the Panel granted Claimants' Second Motion to Amend Statement of Claim.

On June 10, 2019, Respondents filed a Motion to Dismiss (“First Motion to Dismiss”) pursuant to Rule 12206 of the Code of Arbitration Procedure (“Code”). On July 10, 2019, Claimants filed an opposition to the motion. On August 21, 2019, Respondents filed a reply in support of their First Motion to Dismiss.

On September 18, 2019, Respondents filed a Motion to Dismiss in Part the Second Amended Statement of Claim (“Second Motion to Dismiss”) pursuant to Rule 12206 of the Code. On October 25, 2019, Claimants filed a response opposing the Second Motion to Dismiss. On November 5, 2019, Respondents filed a reply in support of their motion.

On December 13, 2019, the Panel heard oral arguments on the First Motion to Dismiss and the Second Motion to Dismiss. On December 19, 2019, the Panel granted Respondents’ motion to dismiss claims with respect to Claimants’ August 2012 purchase of UDF IV on the grounds that such claims are not eligible for arbitration because the event or occurrence giving rise to the claim, namely Claimants’ purchase of the securities, occurred prior to the six-year eligibility period and nothing else was alleged to have occurred within the last six years that would support eligibility. The Panel denied the motion to dismiss claims with respect to Claimants’ May 2013 and August 2016 purchases of shares of UDF IV. The Panel granted the motion to dismiss the claim relating to the Walton Elm Creek Ranch LP for lack of eligibility because Claimants alleged no event or occurrence was alleged during the eligibility period that could form the basis for a claim.

Respondents’ motions to dismiss in part with respect to Claimants’ August 2012 UDF IV share purchase and Walton Elm Creek Ranch LP purchase pursuant to Rule 12206 of the Code are granted by the Panel without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

On August 25, 2021, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim, as amended.

On September 2, 2021, Turner and Van Sant filed a Motion for Expungement. On September 13, 2021, Claimants filed a notice of non-opposition to the Motion for Expungement.

The Panel conducted a recorded, telephonic hearing on January 11, 2022 so the parties could present oral argument and evidence on Turner’s and Van Sant’s request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Turner’s and Van Sant’s BrokerCheck® Reports. 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 documentation related to Occurrence Numbers 2013420 and 2013421, considered the amount of payment 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 Turner and Van Sant did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the settlement agreement; pleadings; and 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 2013420) from registration records maintained by the CRD for Respondent David John Turner (CRD Number 2233405) with the understanding that, pursuant to Notice to Members 04-16, Respondent David John Turner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel also recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2013421) from registration records maintained by the CRD for Respondent John Joseph Van Sant (CRD Number 4584363) with the understanding that, pursuant to Notice to Members 04-16, Respondent John Joseph Van Sant 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 finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Panel has made the above Rule 2080 finding based on the following reasons:

Evidence was presented at the expungement hearing that led the Panel to believe that Turner and Van Sant were not involved in the alleged sales practice violation that was the subject of the filing of the Statement of Claim by Claimants. Turner and Van Sant both testified that they had no conversations with Claimants or the registered representatives regarding the claims made in the Statement of Claim. Turner and Van Sant were the Chief Executive Officer and Chief Financial Officer, respectively, of Cascade. There was a Chief Compliance Officer at all relevant times who had supervisory responsibility over the registered representative. Therefore, Turner and Van Sant were not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds. The Panel reviewed the settlement agreement, considered the amount paid to Claimants and other relevant

terms and conditions of the settlement. The Panel recommends expungement of the complaint set forth by Claimants.

2. Any and all claims for relief not specifically addressed herein 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	= \$	1,575.00
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**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, Cascade is assessed the following:

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

Postponement Fees

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

October 15-18, 2019, postponement requested by Parties	= \$	1,125.00
March 31-April 3, 2020, postponement requested by Parties	= \$	1,125.00
August 17-20, 2021, postponement requested by Parties	= \$	1,125.00

Total Postponement Fees	= \$	3,375.00
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The Panel has assessed \$1,687.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the postponement fees jointly and severally to Respondents.

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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Respondents submitted four (4) discovery-related motions

Total Discovery-Related Motion Fees	= \$	800.00
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The Panel has assessed the \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed the \$600.00 of the discovery-related motion fees jointly and severally to Respondents.

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:

Seven (7) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	7,875.00
Pre-Hearing Conferences: January 29, 2019	1 session	
August 13, 2019	1 session	
December 13, 2019	1 session	
September 14, 2020	1 session	
December 16, 2020	1 session	
May 10, 2021	1 session	
December 20, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: January 11, 2022	1 session	
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Total Hearing Session Fees	= \$	9,000.00

The Panel has assessed \$3,375.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$3,375.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$2,250.00 of the hearing session fees jointly and severally to Turner and Van Sant.

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

ARBITRATION PANEL

Richard J. Lawrence	-	Public Arbitrator, Presiding Chairperson
Baldwin Ranson	-	Public Arbitrator
Eileen Joan Carpenter	-	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 J. Lawrence

Richard J. Lawrence
Public Arbitrator, Presiding Chairperson

02/11/2022

Signature Date

Baldwin Ranson
Public Arbitrator

Signature Date

Eileen Joan Carpenter

Eileen Joan Carpenter
Public Arbitrator

02/10/2022

Signature Date

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February 15, 2022

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

ARBITRATION PANEL

Richard J. Lawrence	-	Public Arbitrator, Presiding Chairperson
Baldwin Ranson	-	Public Arbitrator
Eileen Joan Carpenter	-	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 J. Lawrence

Richard J. Lawrence
Public Arbitrator, Presiding Chairperson

02/11/2022

Signature Date

Baldwin Ranson

Baldwin Ranson
Public Arbitrator

Feb. 22, 2022

Signature Date

Eileen Joan Carpenter

Eileen Joan Carpenter
Public Arbitrator

02/10/2022

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.

February 23, 2022

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