

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

JC McCall Revocable Trust,
by Trustee JC McCall

Case Number: 18-04014

vs.

Respondents

First Standard Financial Company LLC,
William C. Gennity,
Philip J. Sparacino,
Robert F. Spiegel
Jeffrey Baber,
Jodi Fauci,
Jonathan Stanley McCormack, and
Carmine Berardi

Hearing Site: Des Moines, Iowa

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant JC McCall Revocable Trust by Trustee JC McCall (“Claimant”): Gail E. Boliver, Esq., Boliver Law Firm, Marshalltown, Iowa.

For Respondents First Standard Financial Company LLC (“First Standard”), William C. Gennity (“Gennity”), Philip J. Sparacino (“Sparacino”), Robert F. Spiegel (“Spiegel”), Jeffrey Baber (“Baber”), Jodi Fauci, (“Fauci”), and Jonathan Stanley McCormack (“McCormack”): Craig A. Riha, Esq., Finkelstein & Feil, P.C., Bohemia, New York.

For Respondent Carmine Berardi (“Berardi”): Martin H. Kaplan, Esq. and Robyn D. Paster, Esq., Gusrae Kaplan Nusbaum PLLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 26, 2018.

Amended Statement of Claim filed on or about: January 21, 2019.

Second Amended Statement of Claim filed on or about: November 1, 2019.

Claimant signed the Submission Agreement: November 21, 2018.

Statement of Answer filed by First Standard, Gennity, Sparacino, and Spiegel (collectively, "Original Respondents") on or about: February 5, 2019.

First Standard signed the Submission Agreement: February 4, 2019.

Gennity signed the Submission Agreement: February 5, 2019.

Sparacino signed the Submission Agreement: February 4, 2019.

Spiegel signed the Submission Agreement: February 5, 2019.

Statement of Answer to Amended Statement of Claim filed by Baber, Fauci, and McCormack (collectively, "Individual Respondents"): March 7, 2019.

Baber signed the Submission Agreement: March 7, 2019.

Fauci signed the Submission Agreement: March 7, 2019.

McCormack signed the Submission Agreement: March 7, 2019.

Statement of Answer to Second Amended Statement of Claim filed by Berardi on or about: January 17, 2020.

Berardi signed the Submission Agreement: January 17, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the following causes of action: breach of fiduciary duty; unauthorized trading; negligence; breach of contract; misrepresentation, including negligent misrepresentation, constructive fraud, and fraudulent non-disclosure; failure to supervise/respondent superior; violations of industry standards; and respondent superior and control person liability. The causes of action relate to Claimant's allegation that First Standard failed to properly evaluate Claimant's investment needs and, as a result, the portfolio and the trading activity that took place in Claimant's account were grossly unsuitable. Claimant also alleges that the unsuitable trading activity included churning of shares in Chesapeake Energy Corp, AK Steele, Transocean Ltd., Seadrill, and Energous. Further, Claimant alleges that, during the account period of November 2016 to November 2017, the annualized turnover for the account was 34.26 and the annualized cost to equity was 103.50%.

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

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

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

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested an award of compensatory damages in the amount of \$90,198.00, interest, attorneys' fees, costs and expert fees, and such other relief as the Arbitrator may decide is appropriate.

In the Statement of Answer, Original Respondents requested an award dismissing with prejudice all claims comprising the Statement of Claim in their entirety; recommending expungement of all references to this matter from the registration records of Gennity, Sparacino, and Spiegel, maintained by the Central Registration Depository ("CRD"); and granting such other and further relief as the Arbitrator deems just and proper.

In the Statement of Answer to Amended Statement of Claim, Individual Respondents requested that all claims against them be dismissed and an award of all costs, including reasonable attorneys' fees, incurred in the defense of this matter.

In the Statement of Answer to Second Amended Statement of Claim, Berardi requested that the Second Amended Statement of Claim be denied in its entirety as to him.

At the close of the hearing, Claimant requested \$127,000.00 in compensatory damages and at least \$1,000,000.00 in punitive damages.

In Claimant's Post-Hearing Written Closing Argument and Trial Brief, Claimant requested compensatory damages in the amount of \$137,039.00; punitive damages in the amount of \$10,000,000.00; costs, forum fees, and attorneys' fees; and expert fees in the amounts of \$3,597.55 and \$10,560.00. Claimant further requested that the Award include language as follows: "The Award entered in this proceeding is a debt for the violations of securities laws or any S.E.C., regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19)."

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On August 21, 2019, Individual Respondents filed a Motion to Dismiss, pursuant to Rule 125404 of the of Arbitration Procedure ("Code"). On October 8, 2019, Claimant filed a Resistance to Motion to Dismiss. On October 14, 2019, Individual Respondents filed a Reply in Support of Motion to Dismiss. On October 16, 2019, Claimant filed a Sur-Reply to Motion to Dismiss. On October 18, 2019, Individual Respondents filed a Rebuttal to Sur-Reply to Motion to Dismiss. On October 31, 2019, the Arbitrator heard oral arguments on the Motion to Dismiss and other matters. In an Order dated November 4, 2019, the Arbitrator denied the Motion to Dismiss.

On September 17, 2019, Original Respondents and Individual Respondents (collectively, "Respondents") filed a Motion to Reargue and Request for Oral Argument ("Motion to Reargue"). On September 23, 2019, Claimant filed an Objection to the Motion to Reargue. On September 27, 2019, Respondents filed a Reply in Support of the Motion to Reargue. In an Order dated November 10, 2019, the Arbitrator denied the Motion to Reargue and ordered Respondents to pay to Claimant the sum of \$450.00 for defense of the Motion to Reargue.

On November 1, 2019, Claimant filed a Motion to Amend Statement of Claim to Add Party Respondent ("Motion to Amend"). On November 21, 2019, Berardi filed an objection to the Motion to Amend ("Objection"). On November 22, 2019, Claimant filed a Response to the Objection. On December 3, 2019, Berardi filed notice of his agreement to the Motion to Amend, subject to amendment of the pre-hearing schedule and postponement of the hearing ("Berardi's Stipulation"). On December 3, 2019, Respondents filed notice of their consent to the terms of

Berardi's Stipulation. On December 4, 2019, Claimant filed notice of its concurrence with Berardi's Stipulation. In an Order dated December 5, 2019, the Arbitrator granted Claimant's Motion to Amend. Accordingly, Berardi was added as a respondent in this matter.

On October 15, 2020, Claimant filed a Motion for Virtual Final Hearing. On October 26, 2020, Berardi filed an Opposition to the Motion for Virtual Hearing. On October 26, 2020, First Standard, Baber, Fauci, and McCormack filed an Opposition to the Motion for Virtual Hearing ("Opposition"). On October 27, 2020, Claimant filed a Reply to the Opposition. In an Order dated November 9, 2020, the Arbitrator granted Claimant's Motion for Virtual Final Hearing.

On November 20, 2020, Claimant filed notice of dismissal of all claims against Baber and Fauci. Accordingly, the Arbitrator did not adjudicate any claims against Baber or Fauci.

AWARD

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

1. First Standard, Gennity, Sparacino, Spiegel, McCormack, and Berardi are jointly and severally liable for and shall pay to Claimant the sum of \$100,000.00 in compensatory damages.
2. First Standard, Gennity, Sparacino, Spiegel, McCormack, and Berardi are jointly and severally liable for and shall pay to Claimant the sum of \$14,157.55 in costs for expert fees.
3. First Standard, Gennity, Sparacino, Spiegel, McCormack, and Berardi are jointly and severally liable for and shall pay to Claimant the sum of \$225.00 in costs as reimbursement for the non-refundable portion of Claimant's filing fee.
4. Claimant's request for specific bankruptcy language in the Award is denied.
5. William Christian Gennity's (CRD Number 4913490) request for expungement of the above-captioned arbitration (Occurrence Number 2010695) from his CRD records is denied.
6. Philip Joseph Sparacino's (CRD Number 3243960) request for expungement of the above-captioned arbitration (Occurrence Number 2011471) from his CRD records is denied.
7. Robert Frank Spiegel's (CRD Number 5861656) request for expungement of the above-captioned arbitration (Occurrence Number 2010696) from his CRD records is denied.
8. 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 = \$ 975.00

**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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, First Standard is assessed the following:

Member Surcharge = \$ 1,100.00
Member Process Fee = \$ 2,250.00

Postponement Fees

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

December 10-12, 2019, postponement requested by Berardi. = \$ 450.00

Total Postponement Fees = \$ 450.00

The Arbitrator has assessed \$337.50 of the postponement fees to Claimant.

The Arbitrator has assessed \$112.50 of the postponement fees, jointly and severally, to Respondents and Berardi.

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:

December 10-12, 2019, cancellation requested by Berardi = \$ 600.00

Total Last-Minute Cancellation Fees = \$ 600.00

The Arbitrator has assessed \$450.00 of the last-minute cancellation fees to Claimant.

The Arbitrator has assessed \$150.00 of the last-minute cancellation fees, jointly and severally, to Respondents and Berardi.

Discovery-Related Motion Fees

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

Six (6) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 1,200.00

Claimant submitted two (2) discovery-related motions
Respondents submitted three (3) discovery-related motions
Berardi submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	1,200.00
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The Arbitrator has assessed \$500.00 of the discovery-related motion fees to Claimant.

The Arbitrator has assessed \$500.00 of the discovery-related motion fees, jointly and severally, to Respondents.

The Arbitrator has assessed \$200.00 of the discovery-related motion fees to Berardi.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions @ \$450.00/session	= \$	1,800.00
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Pre-Hearing Conferences:		
March 28, 2019	1 session	
September 24, 2019	1 session	
October 31, 2019	1 session	
February 6, 2020	1 session	

Six (6) hearing sessions @ \$450.00/session	= \$	2,700.00
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Hearings:		
December 8, 2020	2 sessions	
December 9, 2020	2 sessions	
December 10, 2020	2 sessions	

Total Hearing Session Fees	= \$	4,500.00
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The Arbitrator has assessed \$900.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$225.00 of the hearing session fees, jointly and severally, to Respondents and Berardi.

The Arbitrator has assessed \$675.00 of the hearing session fees, jointly and severally, to Respondents.

The Arbitrator has assessed \$2,700.00 of the hearing session fees, jointly and severally, to Original Respondents, McCormack, and Berardi.

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

ARBITRATOR

Alain Frecon

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Sole 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.

Arbitrator's Signature

Alain Frecon

Alain Frecon
Sole Public Arbitrator

02/03/2021

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 03, 2021

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