

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Huxley Richardson

Case Number: 19-00416

vs.

Respondents
First Standard Financial Company LLC
William Christian Gennity
Aleksandr Osaulenko
John Edward Dalby
Jonathan Stanley McCormack
Carmine Anthony Berardi
Scott Randall Martinson

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: Customer vs. Member and Associated Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Huxley Richardson (“Claimant”): Jonathan E. Neuman, Esq., Law Offices of Jonathan E. Neuman, Fresh Meadows, New York.

For Respondent First Standard Financial Company, LLC (“First Standard Financial”): Michael Leahy, First Standard Financial Company, LLC, Red Bank, New Jersey.

Respondent William Christian Gennity (“Gennity”) did not enter an appearance.

Respondent Aleksandr Osaulenko (“Osaulenko”) appeared pro se.

For Respondent John Edward Dalby (“Dalby”): Liam O'Brien, Esq., McCormick & O'Brien LLP, New York, New York.

For Respondent Jonathan Stanley McCormack (“McCormack”): Craig A. Riha, Esq., Carmel, Milazzo & Feil LLP, New York, New York.

Respondent Carmine Anthony Berardi (“Berardi”) appeared pro se.

Respondent Scott Randall Martinson (“Martinson”) did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: February 6, 2019.
Amended Statement of Claim filed on or about January 2, 2020.
Claimant signed the Submission Agreement: February 5, 2019.

Statement of Answer filed by First Standard Financial on or about: April 2, 2019.
First Standard Financial signed the Submission Agreement: April 2, 2019.

Statement of Answer filed by Osaulenko on or about: April 2, 2019
Osaulenko signed the Submission Agreement: April 2, 2019.

Answer to the Amended Statement of Claim filed by Dalby on or about: September 28, 2020.
Dalby signed the Submission Agreement: September 29, 2020.

Answer to the Amended Statement of Claim and Counterclaim filed by Berardi on or about:
March 25, 2020.
Berardi signed the Submission Agreement: March 4, 2020.

Gennity, McCormack, and Martinson did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: statutory and common law fraud; misrepresentation; suitability; failure to supervise; negligence; churning; gross negligence; breach of contract; breach of fiduciary duty; violation of industry standards; violation of state and federal regulations designed to protect the elderly from financial abuse; and unjust enrichment.

In the Amended Statement of Claim, Claimant named Dalby, McCormack, Berardi, and Martinson as additional respondents and asserted excessive trading and commissions, unauthorized trading, and strict liability as additional causes of action.

The causes of action relate to several unspecified securities.

In the Statement of Answer, First Standard Financial and Osaulenko denied the allegations made in the Statement of Claim and asserted several affirmative defenses.

In his Answer to the Amended Statement of Claim, Dalby denied the allegations made in the Amended Statement of Claim and asserted several affirmative defenses.

In his Answer to the Amended Statement of Claim, Berardi denied the allegations made in the Amended Statement of Claim and asserted several affirmative defenses.

In his Counterclaim, Berardi asserted the following causes of action: frivolous assertion of control person liability; tortious interference with contractual rights; and prima facie tort.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages for trading losses in the amount of approximately \$300,000.00 or in an amount that the Panel deems to be appropriate, subject to proof at hearing;
2. Disgorgement of approximately \$80,000.00 in commissions and mark-ups, subject to proof at hearing;
3. Well-managed portfolio damages;
4. Treble damages for financial elder abuse under Civil Code Section 3345;
5. Punitive damages;
6. Interest at the statutory rate;
7. Reimbursement of reasonable costs associated with the filing of this claim; and
8. Attorney's fees.

In the Amended Statement of Claim, Claimant requested:

1. Compensatory damages for trading losses in the amount of \$303,185.42;
2. Disgorgement of commissions in the amount of \$72,722.30;
3. Pre-judgment and post-judgment interest thereon at the statutory rate of 10% per annum (California Civil Code § 3289);
4. Punitive damages up to three times the amount of the compensatory;
5. Attorneys' fees;
6. Expenses, including expert witness fees;
7. Costs; and
8. Such other, further, and additional relief as to this Panel may seem just and proper.

In the Statement of Answer, First Standard Financial and Osaulenko requested:

1. Claimant's claims be dismissed in their entirety with prejudice; and
2. Expungement of this matter from Osaulenko's Central Registration Depository ("CRD") records.

In the Answer to the Amended Statement of Claim, Dalby requested:

1. All claims against Dalby be dismissed with prejudice;
2. Claimant takes nothing;
3. Attorneys' fees;
4. Costs; and
5. Such other and further relief as it is just and proper.

In the Answer to Amended Statement of Claim and Counterclaim, Berardi requested:

1. All claims be denied as to Berardi;
2. Compensatory damages of at least \$25,000.00;
3. Attorneys' fees;
4. Costs; and
5. Any further relief that the Panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

At the discovery pre-hearing conference held on December 19, 2019, Claimant requested to amend the Statement of Claim. First Standard Financial and Osaulenko opposed Claimant's request. On that same day, the Chairperson issued an order granting the request to amend the Statement of Claim.

On January 27, 2020, Claimant filed a notice of voluntary dismissal of claims against Martinson. Therefore, the Panel made no determination with respect to the claims against Martinson.

On March 22, 2021, First Standard Financial filed for bankruptcy under the United States Bankruptcy Code. In accordance with these filings, all claims against First Standard Financial are indefinitely stayed. Therefore, the Panel made no determination with respect to the claims against First Standard Financial.

On July 9, 2021, Claimant filed a notice of voluntary dismissal of Dalby and Gennity with prejudice. Therefore, the Panel made no determination with respect to the claims against Dalby and Gennity.

On September 8, 2021 Claimant filed a notice of voluntary dismissal of McCormack. Therefore, the Panel made no determination with respect to the claims against McCormack.

After agreeing to the Evidentiary Hearing Dates, and after Notices, Berardi and Osaulenko did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Berardi and Osaulenko received due notice of the hearing and that arbitration of the matter would proceed without Berardi and Osaulenko present, in accordance with the Code of Arbitration Procedure ("Code").

In the Statement of Answer, Osaulenko requested expungement of this matter from his CRD records. However, Osaulenko did not pursue his request further, and therefore, the Panel made no determination regarding expungement.

On November 29, 2021, FINRA received notice that Berardi passed away on November 13, 2021.

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. Berardi and Osaulenko are jointly and severally liable for and shall pay to Claimant the sum of \$280,076.00 in compensatory damages.

2. Berardi and Osaulenko are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 10% per annum from June 13, 2017 through and including the date the Award is fully satisfied.
3. Berardi and Osaulenko are jointly and severally liable for and shall pay to Claimant \$600.00 as reimbursement of the nonrefundable portion of Claimant's filing fee.
4. Berardi's Counterclaim is denied.
5. The Panel made no determination with respect to Osaulenko's expungement request.
6. 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	=\$ 2,000.00
Counterclaim Filing Fee	=\$ 600.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Postponement Fees

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

January 27-29, 2020, postponement requested by the Parties	=\$ 1,400.00
May 25-28, 2021, postponement requested by Claimant	=\$ 1,400.00
September 10, 2021, postponement requested Respondents	=\$ 1,400.00

Total Postponement Fees	=\$ 4,200.00
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The Panel has assessed \$1,400.00 of the postponement fees jointly and severally to Gennity and Osaulenko.

The Panel has assessed \$1,400.00 of the postponement fees jointly and severally to Osaulenko and Berardi.

The Panel has assessed \$1,400.00 of the postponement fees to 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:

May 25-28, 2021, cancellation requested by Claimant	=\$ 1,800.00
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September 10, 2021, cancellation requested by Respondents	= \$	Waived
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Total Last-Minute Cancellation Fees	= \$	1,800.00

The Panel has assessed the total last-minute cancellation fees to Berardi.

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: December 19, 2019	1 session	
	= \$	9,800.00
Seven (7) pre-hearing sessions with the Panel @ \$1,400.00/session		
Pre-Hearing Conferences: May 29, 2019	1 session	
January 23, 2020	1 session	
May 27, 2020	1 session	
November 30, 2020	1 session	
April 27, 2021	1 session	
July 8, 2021	1 session	
October 11, 2021	1 session	
Three (3) hearing sessions @ \$1,400.00/session	= \$	4,200.00
Hearings: September 9, 2021	1 session	
November 11, 2021	2 sessions	
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Total Hearing Session Fees	= \$	14,450.00

The Panel has assessed \$3,250.00 of the hearing session fees jointly and severally to Gennity and Osaulenko.

The Panel has assessed \$5,600.00 of the hearing session fees jointly and severally to Gennity, Osaulenko, Dalby, McCormack and Berardi.

The Panel has assessed \$5,600.00 of the hearing session fees jointly and severally to Osaulenko and Berardi.

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

ARBITRATION PANEL

John J. Fitzpatrick, Jr.	-	Public Arbitrator, Presiding Chairperson
Michael Craig Butterworth	-	Public Arbitrator
Steven Akiba Swernofsky	-	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

John J. Fitzpatrick, Jr.

John J. Fitzpatrick, Jr.
Public Arbitrator, Presiding Chairperson

12/15/2021

Signature Date

Michael Craig Butterworth

Michael Craig Butterworth
Public Arbitrator

12/03/2021

Signature Date

Steven Akiba Swernofsky

Steven Akiba Swernofsky
Public Arbitrator

12/06/2021

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.

December 16, 2021

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