

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Emily Sandusky

Case Number: 19-00999

vs.

Respondents
David Lerner Associates, Inc.
Jeffrey Zelka

Hearing Site: Philadelphia, Pennsylvania

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 Person.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Emily Sandusky: Richard J. Gerace, Esq., Gerace Law Office, Philadelphia, Pennsylvania.

For Respondents David Lerner Associates, Inc., and Jeffrey Zelka: Eugene L. Small, Esq., and Briana K. Huffer, Esq., Eugene L. Small, P.C., New York, New York.

*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant's counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: April 11, 2019.

Amended Statement of Claim filed on or about: February 10, 2020.

Emily Sandusky signed the Submission Agreement: April 11, 2019.

Joint Statement of Answer filed by Respondents on or about: June 21, 2019.

Joint Statement of Answer to the Amended Statement of Claim filed by Respondents on or about: March 2, 2020.

David Lerner Associates, Inc. signed the Submission Agreement: June 21, 2019.

Jeffrey Zelka signed the Submission Agreement: June 21, 2019.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following causes of action: securities fraud, lack of supervision, lack of suitability, breach of contract, and negligence. The causes of action relate to investments in Apple REIT Nine and the "Spirit of America Investment Fund Inc," variously known as "SPIRIT AMER INVT FD INC", "SOAEX", and "SPIRIT AMER ENERGY FD CL A," an in-house oil and gas pipeline fund created by Respondent David Lerner Associates, Inc.

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

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimant requested \$38,000.00 in compensatory damages; interest; attorneys' fees; and that the cost of arbitration be assessed joint and severally against Respondents.

In the Joint Statement of Answer and Joint Statement of Answer to the Amended Statement of Claim, Respondents requested that Claimant's claims be dismissed in their entirety; that the costs of this proceeding be fully assessed against Claimant; that the Arbitrator award Respondents their reasonable attorneys' fees and expert witness costs; that the Arbitrator grant Respondents any other relief as deemed appropriate; and expungement of all references to this matter from the registration records of Respondent Jeffrey Zelka and Unnamed Party Christina Nash maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 10, 2020, Claimant filed a notice of advising that the parties had reached a settlement in principle.

On December 31, 2020, Respondents confirmed that the parties had reached a settlement with respect to the claims and allegations set forth in the Statement of Claim and Amended Statement of Claim. However, the parties would like to schedule a telephonic evidentiary hearing, in order to address Respondents' request for expungement. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim and Amended Statement of Claim.

The Arbitrator conducted a recorded hearing, by videoconference, on February 8, 2021 so the parties could present oral argument and evidence on Jeffrey Zelka's and Christina Nash's request for expungement.

Claimant participated in the expungement hearing and did not oppose the request for expungement.

The Arbitrator reviewed Jeffrey Zelka's and Christina Nash's BrokerCheck® Reports. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Jeffrey Zelka and Christina Nash did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Respondent Jeffrey Zelka's testimony, representations made by Claimant's counsel including the letter dated February 8, 2021, Jeffrey Zelka's and Christina Nash's BrokerCheck® Reports, and the settlement agreement.

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. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2032908) from registration records maintained by the CRD for Respondent Jeffrey Zelka (CRD Number 5556409) with the understanding that, pursuant to Notice to Members 04-16, Respondent Jeffrey Zelka 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 of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

Based on Jeffrey Zelka's testimony at the hearing, he made the customer aware of the risks associated with the investments she made. The investments were consistent with the customer's suitability profile and her stated goals for the account. The customer moved her accounts to another firm which necessitated the sale of the investment products and created a loss in one of them. However, the result of these required sales was a net gain. There was no evidence of unsuitability, misrepresentation, and omission.

2. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2031487) from registration records maintained by the CRD for Unnamed Party Christina Nash (CRD Number 4870294) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Christina Nash 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 of Arbitration Procedure (“Code”), the Arbitrator 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 Arbitrator has made the above Rule 2080 finding based on the following reasons:

Christina Nash was mentioned in the Statement of Claim as the representative who had the Claimant’s account transferred to Jeffrey Zelka upon her leaving the firm. As a result, the customer allegations of unsuitability, misrepresentation, and omission were added to Ms. Nash's CRD record. As set forth by the Claimant during the expungement hearing, and in a written statement provided after the hearing, concluded the following: "As to Christine Nash’s involvement in the claim brought on behalf of Claimant Emily Sandusky, after discovery was conducted, Claimant recognized that there was insufficient evidence to include Ms. Nash any further in these proceedings. Accordingly, Claimant has no objection to the expungement of Ms. Nash’s record." The Arbitrator concluded that Ms. Nash was not involved in the alleged investment-related sales practice violation and the customer information in her CRD report should be expunged.

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 = \$ 600.00

**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 person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent David Lerner Associates, Inc., is assessed the following:

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

Postponement Fees

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

February 3-5, 2020, postponement requested by Respondents	= \$	450.00
December 14-16, 2020, postponement requested by the parties	= \$	450.00
Total Postponement Fees	= \$	900.00

The Arbitrator has assessed \$450.00 of the postponement fees to Claimant.

The Arbitrator has assessed \$450.00 of the postponement fees jointly and severally to Respondents.

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 14-16, 2020, postponement requested by the parties	= \$	600.00
Total Last-Minute Cancellation Fees	= \$	600.00

The Arbitrator has assessed \$300.00 of the last-minute cancellation fees to Claimant.

The Arbitrator has assessed \$300.00 of the last-minute cancellation fees jointly and severally to Respondents.

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:

Five (5) pre-hearing sessions with the Arbitrator @ \$450.00/session	= \$	2,250.00
Pre-Hearing Conferences:		
August 12, 2019	1 session	
January 15, 2020	1 session	
January 17, 2020	1 session	
October 21, 2020	1 session	
October 29, 2020	1 session	
One (1) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing: February 8, 2021	1 session	
Total Hearing Session Fees	= \$	2,700.00

The Arbitrator has assessed \$1,350.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$900.00 of the hearing session fees jointly and severally to Respondents.

The Arbitrator has assessed the \$450.00 hearing session fees for the expungement hearing to Respondent Jeffrey Zelka.

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

ARBITRATOR

Louis P. Wagman

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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

Louis P. Wagman

Louis P. Wagman
Sole Public Arbitrator

03/05/2021

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.

March 05, 2021

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