

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Herbert J. Cohen

Case Number: 19-01728

vs.

Respondents
National Securities Corporation
Scott J. Matalon

Hearing Site: New York, New York

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

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconferencing.

REPRESENTATION OF PARTIES

For Claimant Herbert J. Cohen: Christopher J. Gray, Esq. and Michael DeRienzo, Esq., Law Office of Christopher J. Gray, P.C., New York, New York.*

For Respondent National Securities Corporation (“NSC”): Emily Hayes, Esq., National Holdings Corporation, New York, New York.

For Respondent Scott J. Matalon (“Matalon”): Frank J. Cuccio, Esq. and Andrew Mount, Esq., Bressler, Amery & Ross P.C., Florham Park, New Jersey.

*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: June 18, 2019.

Herbert J. Cohen signed the Submission Agreement: June 18, 2019.

Statement of Answer filed by Respondent NSC on or about: September 26, 2019.
National Securities Corporation signed the Submission Agreement: September 26, 2019.

Statement of Answer filed by Respondent Matalon on or about: September 27, 2019.
Scott J. Matalon signed the Submission Agreement: September 27, 2019

CASE SUMMARY

Claimant asserted the following causes of action: violation of FINRA Rule 2111 - Suitability; breach of fiduciary duty; constructive fraud; breach of contract; agency liability; respondeat superior; and failure to supervise. The causes of action relate to REIT's and variable annuities.

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory and punitive damages in a sum to be established at the arbitration hearing and/or rescind the subject transactions; costs, pre and post judgment interest; and such other and further relief as is just and equitable.

In the Statement of Answer, Respondent NSC requested that the Panel dismiss the Statement of Claim in its entirety; costs and expenses, including forum fees and reasonable attorneys' fees; and any additional relief that is just and proper.

In the Statement of Answer, Respondent Matalon requested that the Panel dismiss the Statement of Claim with prejudice in its entirety; recommend expungement of references to this matter from his CRD records; and such other and further relief as may be just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 14, 2020, Respondent Matalon filed a Motion for Expungement, to which no response was filed.

By correspondence dated October 29, 2020, Claimant notified FINRA that the case settled. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Panel conducted a recorded, videoconference hearing on December 22, 2020 so the parties could present oral argument and evidence on Respondent Matalon's request for expungement.

Claimant participated in the expungement hearing and opposed the request for expungement.

NSC did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed the BrokerCheck® Report for Respondent Scott J. Matalon. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the Central Registration Depository ("CRD").

The Panel also reviewed the settlement documents, considered the amount of payments 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 Scott J. Matalon contributed \$20,000.00 of the \$50,000.00 settlement amount. In his testimony, Respondent Matalon stated that the amount he contributed to the settlement reflected a minimum amount of anticipated legal fees in this matter to be incurred by him, which seemed credible.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings, exhibits, Respondent Matalon's BrokerCheck® Report, the settlement documents, and Respondent Matalon's testimony.

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

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, 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 2038752) from registration records maintained by the CRD for Respondent Scott J. Matalon (CRD Number 4637378) with the understanding that, pursuant to Notice to Members 04-16, Respondent Scott J. Matalon 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 Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the claim, allegation, or information is false.

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

The Panel rules in favor of expungement because it is false that Claimant had only modest investment experience at the time he met Scott Matalon, and false that Mr. Matalon breached his fiduciary duty. Claimant had several investment accounts elsewhere, including JP Morgan, had a high net worth, was an "accredited investor" and

the stated information in the "suitability" portion of at least one of his applications that he completed at NSC were: (i) extensive general investment knowledge (ii) top investment objectives were speculation and trading profits, (iii) with an aggressive risk tolerance and (iv) intermediate term investment horizon. The Panel concludes that it was not unsuitable for Claimant to invest in the REIT or Annuity, once he read and reviewed all the documents, including the risk disclosures, and discussed them with Mr. Matalon.

It is clearly erroneous that NSC and Matalon's recommendations with respect to both the REIT and Annuity were unsuitable and were a breach of fiduciary duty. Whether Claimant asked for a particular investment product or Mr. Matalon suggested one (based on Claimant's objectives as documented in the exhibits), Mr. Matalon always had several conversations with Claimant about the benefits and risks of each investment prior to and at the time of purchase. Claimant reviewed the details of each investment before purchasing them. Moreover, to invest in these alternative investments, Claimant had to certify that he was an "accredited investor" and attest to the fact that he had read the private placement prospectus, risk factors, etc. And for each of these investments, a designated supervisor, OSJ, of NSC had to sign off on the investment. For the annuity, the insurance supervisory officer did as well. Claimant attested to the fact that he had read and reviewed each investment by signing each of the many forms required to make these kind of investments. Claimant's account was non-discretionary and Mr. Matalon did not make investments without Claimant's express and written consent, with full disclosures provided in the documents. There is no overriding public interest for this false and erroneous information to remain on Mr. Matalon's CRD

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 = \$ 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent National Securities Corporation is assessed the following:

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

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 Arbitrators, including a pre-hearing conference with the Arbitrators, 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: May 7, 2020	1 session	
Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-hearing Conferences: November 19, 2019	1 session	
March 31, 2020	1 session	
November 10, 2020	1 session	
Two (2) hearing sessions on expungement request @ \$1,125.00/session	= \$	2,250.00
Hearing Date: December 22, 2020	2 sessions	
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Total Hearing Session Fees	= \$	6,075.00

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

The Panel has assessed \$225.00 of the hearing session fees to NSC.

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

The Panel has assessed \$3,375.00 of the hearing session fees, which includes fees for the expungement hearing, to Respondent Matalon.

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

ARBITRATION PANEL

Anna Lascar	-	Public Arbitrator, Presiding Chairperson
Fern Sue Reidman	-	Public Arbitrator
Ellyn S. Roth	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures

Anna Lascar

Anna Lascar
Public Arbitrator, Presiding Chairperson

01/25/2021

Signature Date

Fern Sue Reidman

Fern Sue Reidman
Public Arbitrator

01/25/2021

Signature Date

Ellyn S. Roth

Ellyn S. Roth
Public Arbitrator

01/25/2021

Signature Date

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January 26, 2021

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