

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Janet Narduzzi
Cynthia Toliver
Amy Toliver

Case Number: 19-01888

vs.

Respondents

AXA Advisors, LLC
John Christian Arnold

Hearing Site: Phoenix, Arizona

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 Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Janet Narduzzi, Cynthia Toliver, and Amy Toliver (“Claimants”): Stephen C. Mouritsen, Esq., Parr Brown Gee & Loveless, Salt Lake City, Utah.

For Respondent AXA Advisors, LLC (“AXA Advisors”): Daniela Paez, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

For Respondent John Christian Arnold (“Arnold”): Nancy L. Hendrickson, Esq., Kaufman Dolowich & Voluck, LLP, Chicago, Illinois.

Hereinafter, Respondent Arnold and AXA Advisors are collectively referred to as “Respondents”.

*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: July 5, 2019.

Claimants signed the Submission Agreement: July 17, 2019.

Statement of Answer filed by AXA Advisors on or about: October 15, 2019.
AXA Advisors signed the Submission Agreement: August 19, 2019.

Statement of Answer filed by Respondent Arnold on or about: October 15, 2019.
Respondent Arnold signed the Submission Agreement: October 15, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; violation of FINRA's reporting requirements under FINRA Rule 4530; and breach of FINRA's requirement for procedures to prevent fraud under FINRA Rule 3110, including the fraudulent transfer of Claimants' funds to an employee of Respondent AXA Advisors. The causes of action relate to Claimants' retirement accounts maintained through AXA Advisors.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Compensatory damages in the approximate amount of \$500,000.00;
2. Interest at the statutory rate;
3. Attorneys' fees;
4. Expert fees;
5. Forum fees; and
6. Such other and further relief as this Panel deems just and proper.

In its Statement of Answer, AXA Advisors requested the Panel to deny or dismiss all claims against it.

In his Statement of Answer, Respondent Arnold requested:

1. The Statement of Claim and the relief requested therein be denied and dismissed in its entirety;
2. Claimants be assessed with all fees and costs incurred herein; and
3. The instant arbitration claim be expunged from Respondent Arnold's Central Registration Depository ("CRD") records in accordance with the applicable FINRA rule.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 17, 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.

On March 30, 2021, Respondent Arnold filed a motion for expungement. On March 31, 2021,

Claimants sent an email advising that they do not oppose Respondent Arnold's expungement request.

The Panel conducted a recorded telephonic on April 26, 2021, so the parties could present oral argument and evidence on Respondent Arnold's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Respondent Arnold's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Panel 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 Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Respondent Arnold did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings and Respondent Arnold's exhibits.

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 2042436) from registration records maintained by the CRD for Respondent John Christian Arnold (CRD Number 3245275) with the understanding that, pursuant to Notice to Members 04-16, Respondent John Christian Arnold 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.

The claim, allegation, or information is false.

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

Respondent John Christian Arnold was a victim of the famous saying "no good deed goes unpunished." He discovered the embezzlement/conversion of Claimants' funds that

was accomplished by another AXA Advisors financial advisor, Mr. Price, brought it to the attention of Claimants (as well as Mr. Price’s prior loss of license to sell securities), and assisted Claimants and law enforcement in the criminal prosecution of Mr. Price – which resulted in Mr. Price being sentenced to prison. Respondent Arnold further persuasively testified to our panel that he was not involved in the hiring or the direct supervision of Mr. Price. Yet, finding Mr. Price to be increasingly irresponsible in attending meetings and attending to his duties, Respondent Arnold suggested to Mr. Price to resign or he would recommend Mr. Price’s termination to the appropriate supervisor. Mr. Price chose to resign.

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 = \$ 1,425.00

**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 AXA Advisors 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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: November 19, 2019	1 session	
August 26, 2020	1 session	
February 4, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: April 26, 2021	1 session	
Total Hearing Session Fees	= \$	4,500.00

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,875.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,125.00 of the hearing session fees to Respondent Arnold.

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

ARBITRATION PANEL

Kenneth L. Mann	-	Public Arbitrator, Presiding Chairperson
Jay H. Feldstein	-	Public Arbitrator
David S. Eisenberg	-	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

Kenneth L. Mann

Kenneth L. Mann
Public Arbitrator, Presiding Chairperson

05/17/2021

Signature Date

Jay H. Feldstein

Jay H. Feldstein
Public Arbitrator

05/13/2021

Signature Date

David S. Eisenberg

David S. Eisenberg
Public Arbitrator

05/13/2021

Signature Date

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May 18, 2021

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