

**Award**  
**FINRA Dispute Resolution Services**

---

In the Matter of the Arbitration Between:

Claimants

Thomas M. Johnson & Jean A. Johnson,  
JTWROS and Thomas M. Johnson, Jr. &  
Pamela J. Johnson, JTWROS

Case Number: 19-02389

vs.

Respondents

Kingsbury Capital, Inc. and  
Charles S. Hall

Hearing Site: Orlando, Florida

---

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 Thomas M. Johnson & Jean A. Johnson, JTWROS and Thomas M. Johnson, Jr. & Pamela J. Johnson, JTWROS (collectively, “Claimants”): William B. Young, Jr., Esq., Colling Gilbert Wright & Carter, LLC, Orlando, Florida and Scott S. Silver, Esq., Silver Law Group, Coral Springs, Florida.\*

For Respondent Kingsbury Capital, Inc. (“Kingsbury”): Peter B. King, Esq. and Michael J. Mariani, Esq., Guerra King P.A., Tampa, Florida.

For Respondent Charles Shipley Hall (“Hall” and together with Kingsbury, collectively, “Respondents”): Victor L. Hayslip, Esq. and Benjamin B. Coulter, Esq., Burr & Forman LLP, Birmingham, Alabama.

\*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants 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 by Claimants on or about: August 20, 2019.  
Claimants each signed the Submission Agreement: August 20, 2019.

Statement of Answer filed by Kingsbury: December 20, 2019.  
Kingsbury signed the Submission Agreement: January 6, 2020.

Statement of Answer filed by Hall: December 23, 2019.  
Hall signed the Submission Agreement: December 23, 2019.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, breach of contract, and failure to supervise. The causes of action relate to Claimants' allegation that Respondents did not conduct adequate due diligence before Hall recommended that Claimants invest in GPB Automotive Portfolio, LP ("Automotive Portfolio"), a private placement managed by GPB Capital Holdings ("GPB"). Claimants also allege that, had proper due diligence been performed, Respondents would have discovered, among other things, that there were significant issues concerning the assets purportedly owned and managed and that there were serious misstatements of financials and other reports for, at least, the years 2015 and 2016. Claimants further allege that GPB and its underlying funds have committed fraud and/or are operating a Ponzi scheme.

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

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages in an amount according to proof to be offered at the final hearing, interest at the legal rate from the date of purchase or reasonable market return, punitive damages, costs of this proceeding, and such other relief as the Panel deems just and proper.

In the Statement of Answer, Kingsbury requested that Claimants' claims be denied in their entirety; an award of costs, including all forum fees; and such further relief as the Panel deems just and equitable.

In the Statement of Answer, Hall requested that the Statement of Claim be dismissed in its entirety, all costs and forum fees be assessed against Claimants, and such and further relief as the Panel deems just and proper.

Hall filed a request for expungement of all references to this matter from the Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On September 30, 2020, Claimants filed notice that the parties had reached a resolution to the arbitration case. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 9, 2020, Hall filed a Petition for Order of Expungement (“Motion for Expungement”). On October 19, 2020, Kingsbury filed a Response in Opposition to the Motion for Expungement. On October 26, 2020, Hall filed a Reply in Support of the Motion for Expungement.

On December 17, 2020, Claimants submitted correspondence that they were not taking a position on Hall’s request for expungement.

The Panel conducted a recorded, telephonic hearing on December 18, 2020, so the parties could present oral argument and evidence on Hall’s request for expungement.

Neither Claimants nor Claimants’ counsel participated in the expungement hearing.

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

The Panel reviewed Hall’s BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the 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 Hall did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, sworn testimony of the witnesses, BrokerCheck® Report, and Hall’s Exhibits 1 - 18.

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. The Panel recommends the expungement of all references to Occurrence Number 2046557 from registration records maintained by the CRD for Charles Shipley Hall (CRD Number 233982) with the understanding that, pursuant to Notice to Members 04-16, Charles Shipley Hall 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 finding of fact:

The claim, allegation, or information is false.

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

The settlement amount was approximately 23% of the amount claimed (half of the insurance coverage limit). Hall testified that he did not pay any portion of the settlement amount and that the settlement was a business decision to avoid the substantial time and costs of continued litigation. Hall testified that no other claims were filed against him in 50 years in the business.

The investment was suitable for Claimants, based on Hall’s testimony. Kingsbury conducted appropriate due diligence and determined that the investment, Automotive Portfolio, was suitable for accredited investors. Hall conducted additional due diligence concerning the investment and believed it was suitable for his accredited investor clients, for Claimants in particular, and for himself. Claimants had indicated on their new account forms that their risk tolerance was conservative and that their investment objective was capital preservation; however, they had also indicated that they needed income generation and expressed to Hall a desire for income distributions. The investment would provide the income distributions that Claimants desired.

Hall further testified that he lets his customers know about investments and provides them with the opportunity to obtain information directly from the companies offering the investments, in addition to the private placement memorandums. Here, Hall provided opportunities for Claimants to obtain information beyond what was in the private placement memorandum by attending a seminar conducted by the sponsoring broker and officers of GPB. Claimants were high-income, high net-worth, sophisticated business people and had previously invested in alternative investments with Respondents. Claimants reviewed the private placement memorandum, which included the risks involved in the investments, and additional information provided by the sponsoring broker and ultimately made the decision to invest. Claimants received income for over two years.

2. 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	= \$ 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Kingsbury is assessed the following:

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

**Discovery-Related Motion Fees**

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

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	400.00
--	------	--------

Kingsbury submitted two (2) discovery-related motions

---

Total Discovery-Related Motion Fees	= \$	400.00
-------------------------------------	------	--------

The Panel has assessed \$300.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed the \$100.00 of the discovery-related motion fees to Kingsbury.

**Contested Motion for Issuance of Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with one Arbitrator @ \$200.00	= \$	200.00
--	------	--------

---

Total Contested Motion for Issuance of Subpoena Fees	= \$	200.00
--	------	--------

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Kingsbury.

**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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: January 6, 2020	1 session	
November 17, 2020	1 session	

Two (2) hearing sessions on expungement request @ \$1,125.00/session	= \$	2,250.00
Hearing Dates: December 18, 2020	2 sessions	

---

Total Hearing Session Fees = \$ 4,500.00

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Kingsbury and Hall.

The Panel has assessed \$3,375.00 of the hearing session fees to Hall.

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

**ARBITRATION PANEL**

Gayle B. Carlson	-	Public Arbitrator, Presiding Chairperson
Stuart K. Furman	-	Public Arbitrator
Thomas Joseph Atkinson, Sr.	-	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**

***Gayle B. Carlson***

\_\_\_\_\_  
Gayle B. Carlson  
Public Arbitrator, Presiding Chairperson

**01/05/2021**

\_\_\_\_\_  
Signature Date

***Stuart K. Furman***

\_\_\_\_\_  
Stuart K. Furman  
Public Arbitrator

**01/06/2021**

\_\_\_\_\_  
Signature Date

***Thomas Joseph Atkinson, Sr.***

\_\_\_\_\_  
Thomas Joseph Atkinson, Sr.  
Public Arbitrator

**01/06/2021**

\_\_\_\_\_  
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.

January 06, 2021

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