

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Teri Goettsche,
Teri Goettsche IRA, and
Teri Goettsche as Trustee of the Gunter Trust

Case Number: 19-02519

vs.

Respondents

Commonwealth Financial Network and
Robert James Messett d/b/a Messett Financial

Hearing Site: Dallas, Texas

and

Counter-Claimant

Commonwealth Financial Network

vs.

Counter-Respondents

Teri Goettsche,
Teri Goettsche IRA, and
Teri Goettsche as Trustee of the Gunter Trust

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
Member vs. Customers

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Teri Goettsche (“Goettsche”), Teri Goettsche IRA, and Teri Goettsche as Trustee of the Gunter Trust (collectively “Claimants”): Richard A. Lewins, Esq., LewinsLaw, PC, Dallas, Texas.*

For Respondent Commonwealth Financial Network (“Commonwealth”): Michael G. Brown, Esq., Figari + Davenport, LLP, Dallas, Texas.

For Respondent Robert James Messett (“Messett”): Jon M. Stanfield, Esq., Rees, Kincaid & Stanfield, Lenexa, Kansas.

*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 Claimants' counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: August 26, 2019.

Statement of Answer to the Counterclaim filed on or about: December 20, 2019.

Amended Statement of Claim was filed on or about: March 29, 2020.

Claimants signed the Submission Agreement: August 23, 2019.

Statement of Answer and Counterclaim filed by Commonwealth on or about: November 19, 2019.

Statement of Answer to the Amended Statement of Claim filed by Commonwealth on or about: April 17, 2020.

Commonwealth signed the Submission Agreement: September 9, 2019.

Statement of Answer filed by Messett on or about: October 28, 2019.

Statement of Answer to the Amended Statement of Claim filed by Messett on or about: April 17, 2020.

Messett signed the Submission Agreement: September 19, 2019.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, breach of contract, unsuitability, failure to supervise, and violation of the Texas Securities Act. The causes of action related to Claimants' allegation that Messett recommended alternative investments that had high commissions and were high-risk and illiquid, contrary to Claimants' investment objectives of preservation of capital and Goettsche's expressed aversion to risk. The investments included Carter Validus Mission Critical REIT, NorthStar Healthcare Income, Inc., NorthStar Real Estate Income II, Inc., American Realty Capital Retail Centers of America n/k/a AFIN, American Realty Capital Healthcare Trust II n/k/a Healthcare Trust Inc., and Steadfast Apartment REIT.

Unless specifically admitted in the Statement of Answer, as amended, Commonwealth denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Further, Commonwealth removed its Counterclaim, asserting indemnification as a cause of action.

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

Unless specifically admitted in the Statement of Answer to the Counterclaim, Claimants denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested compensatory damages of approximately \$500,000.00, interest, costs and attorneys' fees, and such other and further relief as the Panel deems appropriate.

In the Statement of Answer, as amended, Commonwealth requested that Claimants' request for relief against it and any asserted or assertable claims against it be dismissed with prejudice; that all relief requested by Claimants be denied in all respects; that it be awarded reasonable attorneys' fees, expert fees, and all costs (including forum fees); and that it be granted all other and further relief, both at law and in equity, to which it may show itself justly entitled. Further, Commonwealth removed the Counterclaim's request for indemnification.

In the Statement of Answer, as amended, Messett requested that the Panel dismiss the Statement of Claim in its entirety; award him the costs and expenses of this arbitration, including forum fees and reasonable attorneys' fees; and award him such other and further relief as is just and proper. Further, Messett requested expungement of all references to this matter from registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer to the Counterclaim, Claimants requested that Commonwealth's Counterclaim and request for relief be denied in all respects.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 10, 2020, during the Initial Pre-Hearing Conference, and pursuant to the agreement of the parties, the Panel granted the parties' oral request for leave to file an Amended Statement of Claim and Answers thereto. In an Order dated June 5, 2020, the Panel ordered that the Amended Statement of Claim, filed on March 29, 2020, and the Statements of Answer to the Amended Statement of Claim, filed on April 17, 2020, were all deemed timely filed and accepted among the pleadings filed in this arbitration. As the Statement of Answer to the Amended Statement of Claim filed by Commonwealth removed the Counterclaim, the Panel made no determination with respect to any of the relief requests contained in the Counterclaim.

On October 26, 2020, Claimants filed a notice of settlement and dismissal with prejudice of all claims against Commonwealth. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim, as amended, as to Commonwealth.

On December 18, 2020, Claimants filed a notice of settlement and dismissal with prejudice of all claims against Messett. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim, as amended, as to Messett.

On January 4, 2021, Messett filed a Motion for Expungement. On January 14, 2021, Claimants filed a response to the Motion for Expungement, advising that they did not oppose Messett's expungement request.

The Panel conducted a recorded, telephonic hearing on February 9, 2021, so the parties could present oral argument and evidence on Messett's request for expungement.

Neither Claimants nor their counsel participated in the expungement hearing.

The Panel reviewed Messett'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 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 Messett contributed to the settlement amount. The Panel also noted Messett's testimony that the settlement amount was no more than he reasonably expected to pay in attorneys' fees and expert fees, should he continue to a full hearing. The Panel determined that the settlement was a nuisance value settlement intended to resolve the matter once and for all, without the additional time and expense required to fully arbitrate all claims.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Messett's testimony, the pleadings, Motion for Expungement, Messett's Exhibits 1-9, and Claimants' response to the Motion for Expungement.

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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2046515) from registration records maintained by the CRD for Respondent Robert James Messett (CRD Number 2918392) with the understanding that, pursuant to Notice to Members 04-16, Respondent Robert James Messett 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 claims asserted by Claimants against Messett are false. Goettsche is a sophisticated real estate investor, who specifically sought the alternative investments that are the subject of her claims. She was qualified to make the investments, received proper information and disclosures regarding the investments, and signed multiple documents acknowledging that she understood what she was doing. The investments were properly recommended and explained by Messett and were suitable, given Goettsche's financial condition, her stated objectives, and the balance provided by her and her husband's other financial investments. Goettsche repeatedly demonstrated knowledge and understanding of the alternative investments, and Messett communicated extensively and thoroughly with her. Messett was not negligent, did not breach duties owed to Claimants, and did not violate the Texas Securities Act.

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
Counterclaim Filing Fee	= \$ 2,125.00

**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, Commonwealth is assessed the following:

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

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

October 27, 2020, cancellation requested by the parties	Waived
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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 the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: March 10, 2020	1 session

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: February 9, 2021 1 session		
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Total Hearing Session Fees	= \$	2,250.00

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 Commonwealth and Messett.

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

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

ARBITRATION PANEL

Nicole T. LeBoeuf	-	Public Arbitrator, Presiding Chairperson
Robert L. Chisolm	-	Public Arbitrator
Staci Lynette Glenn	-	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

Nicole T. LeBoeuf

Nicole T. LeBoeuf
Public Arbitrator, Presiding Chairperson

02/16/2021

Signature Date

Robert L. Chisolm

Robert L. Chisolm
Public Arbitrator

02/17/2021

Signature Date

Staci Lynette Glenn

Staci Lynette Glenn
Public Arbitrator

02/17/2021

Signature Date

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February 17, 2021

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