

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Patrick L. Taylor

Case Number: 19-02734

vs.

Respondents

Cape Securities Inc., SW Financial,
Woodstock Financial Group, Inc.,
Anthony Branca, Christopher Collins,
Thomas Diamante, Dennis Murphy,
Jamaal Potter, William Raike, III,
James Webb, and Melissa Whitley

Hearing Site: Kansas City, Missouri

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. Members and Associated Persons

REPRESENTATION OF PARTIES

For Claimant Patrick L. Taylor (“Claimant”): Jonathan E. Neuman, Esq., Law Offices of Jonathan E. Neuman, Esq., Fresh Meadows, New York.

For Respondents Cape Securities Inc. (“Cape”) and James Webb (“Webb”): Judy A. Newcomb, Esq., Murchison & Newcomb, LLC, Foley, Alabama.

For Respondents SW Financial (“SW”) and Thomas Diamante (“Diamante”): Charles M. O'Rourke, Esq., Woodbury, New York.

For Respondents Woodstock Financial Group, Inc. (“Woodstock”), Anthony Branca (“Branca”), William Raike, III (“Raike”), and Melissa Whitley (“Whitley”): Scott Holcomb, Esq., Holcomb + Ward, LLP, Atlanta, Georgia.

Respondent Christopher Collins (“Collins”) did not appear.

Respondent Dennis Murphy (“Murphy”) did not appear.

Respondent Jamaal Potter (“Potter”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2019.
Addendum to Statement of Claim filed on or about: February 7, 2020.
Answer to Counterclaim and Motion for Sanctions filed on or about: December 6, 2019.
Claimant signed the Submission Agreement: June 11, 2019.

Statement of Answer and Counterclaim filed by Cape and Webb on or about: November 19, 2019.
Cape and Webb each signed the Submission Agreement: November 4, 2019.

Statement of Answer filed by Woodstock, Branca, and Raike on or about: November 19, 2019.
Woodstock, Branca, and Raike did not sign the Submission Agreement.

SW, Diamante, Collins, Murphy, Potter, and Whitley did not file Statements of Answer or sign Submission Agreements.

Cape, Webb, SW, Diamante, Woodstock, Branca, Raike, Collins, Murphy, Potter, and Whitley are hereinafter, collectively, referred to as "Respondents."

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: statutory and common law fraud, misrepresentation, suitability, failure to supervise, negligence, churning, gross negligence, breach of contract, breach of fiduciary duty, breach of covenants of good faith and fair dealing, unauthorized trading, excessive trading, excessive commission, unjust enrichment, and respondeat superior. The causes of action related to Claimant's allegation that Respondents took advantage of him, generated excessive commissions, and made unsuitable recommendations.

Unless specifically admitted in the Statement of Answer and Counterclaim, Cape and Webb denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted the following causes of action: breach of contract, abuse of process, defamation of license, and interference with business relationships or expected relationships. The causes of action related to Cape and Webb's allegations that they relied on Claimant's representations in signed account paperwork to recommend stocks and execute trades and that Claimant breached his contracts with Cape.

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

Unless specifically admitted in the Answer to Counterclaim and Motion for Sanctions, Claimant denied the allegations made in the Counterclaim and asserted various defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensation for trading losses of approximately \$94,353.00 or that amount of compensatory damages the Arbitrator deems to be appropriate;

disgorgement of commissions and mark-ups; interest at the statutory rate, as provided by law; reimbursement for the reasonable costs associated with filing this claim, including costs of representation, travel, and expert witnesses; and punitive damages. And, in the Addendum to Statement of Claim, Claimant clarified that his request was for damages of less than \$100,000.00, exclusive of interest and costs.

In the Statement of Answer, Cape and Webb requested denial of all claims made by Claimant; that Claimant take nothing by way of the Statement of Claim; costs and attorneys' fees; expungement of all references to this matter from Webb's Central Registration Depository ("CRD") registration records; that forum fees be assessed to Claimant; and such other and further relief as the Arbitrator deems just and appropriate. And, in the Counterclaim, Cape and Webb requested damages not to exceed \$90,000.00, attorneys' fees, costs, and all other relief to which they may be entitled.

In the Statement of Answer, Woodstock, Branca, and Raike requested denial of all claims against them, that all costs be assessed against Claimant, expungement of all references to this matter from Branca and Raike's CRD registration records, and any and all other relief that the Arbitrator deems just and proper.

In the Answer to Counterclaim and Motion for Sanctions, Claimant requested dismissal or denial of the Counterclaim, sanctions in the amount of \$10,000.00 against Cape and Webb's counsel, and costs associated with writing the Answer to Counterclaim and Motion for Sanctions.

OTHER ISSUES CONSIDERED AND DECIDED

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

Potter did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and having appeared and testified at the hearing is bound by the determination of the Arbitrator on all issues submitted.

Murphy did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code.

Murphy also did not file a Statement of Answer. The Arbitrator determined that Murphy was served with the Claim Notification letter dated September 16, 2019 by regular mail and certified mail, as evidenced by the signed signature card on file. The Arbitrator also determined that Murphy was served with the Notification of Arbitrator dated December 2, 2019 by regular mail and email.

The Claim Notification letter notified Murphy that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Murphy failed to register for the DR Portal.

The Arbitrator determined that Murphy is, therefore, bound by the Arbitrator's ruling and determination.

On November 13, 2019, Claimant filed a notice of voluntary dismissal without prejudice of the claims against Whitley.

On November 20, 2019, Claimant filed a notice of settlement with SW, Diamante, and Collins. Therefore, the Arbitrator made no determination with respect to any of the relief requests against SW, Diamante, and Collins.

On December 16, 2019, Cape and Webb filed a Response to the Motion for Sanctions, which was included with the Answer to Counterclaim. On January 9, 2021, the Arbitrator discussed the Answer to Counterclaim and Motion for Sanctions with the parties. In an Order dated the same day, the Arbitrator directed Claimant to file an amended pleading for the purpose of clarifying the claim for damages. On February 7, 2020, Claimant filed the Addendum to Statement of Claim. In an Order dated March 5, 2020, the Arbitrator clarified that no responsive filing from Respondent was due regarding any pending motion. The Arbitrator herein denies Claimant's Motion for Sanctions.

On December 26, 2019, Claimant filed a notice of settlement with Woodstock, Branca, Raike, and Whitley. Therefore, the Arbitrator made no determination with respect to any of the relief requests against Woodstock, Branca, Raike, and Whitley.

Murphy did not appear at the hearing. Upon review of the file, the Arbitrator determined that Murphy received due notice of the hearing and that arbitration of the matter would proceed without Murphy present, in accordance with the Code.

At the hearing, Webb moved to dismiss Claimant's claims against him on the basis that he was not a controlling person and had no supervisory responsibilities. Claimant opposed the motion to dismiss. The Arbitrator denied Webb's motion to dismiss on the record.

Webb, Branca, and Raike did not pursue their expungement requests. Therefore, the Arbitrator deemed their expungement requests withdrawn.

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. Cape is liable for and shall pay to Claimant the sum of \$57,035.00 in compensatory damages.
2. Cape is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 8% per annum from September 2, 2021 through and including the date this Award is paid in full.
3. Claimant's claims against Webb are denied in their entirety.
4. Claimant's claims against Murphy and Potter are denied without prejudice.
5. Cape and Webb's Counterclaim is denied.

6. 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	= \$	975.00
Counterclaim Filing Fee	= \$	1,750.00

**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 parties, Cape, SW, and Woodstock are each assessed the following:

Member Surcharge	= \$	1,100.00
Member Process Fee	= \$	2,250.00

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:

Four (4) pre-hearing sessions @ \$450.00/session	= \$	1,800.00
Pre-Hearing Conferences:		
January 8, 2020	1 session	
March 5, 2020	1 session	
December 7, 2020	1 session	
April 19, 2021	1 session	
Five (5) hearing sessions @ \$450.00/session	= \$	2,250.00
Hearings:		
August 30, 2021	2 sessions	
August 31, 2021	2 sessions	
September 1, 2021	1 session	

Total Hearing Session Fees	= \$	4,050.00
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The Arbitrator has assessed \$2,025.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$2,025.00 of the hearing session fees to Cape.

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

ARBITRATOR

John R. Loss

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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

John R. Loss

John R. Loss
Sole Public Arbitrator

09/16/2021

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.

September 16, 2021

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