

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Hickory Capital, LLC
Douglas Craig Evans

Case Number: 19-02927

vs.

Respondents

GWFS Equities, Inc.
Kevin Michael Sullivan

Hearing Site: Jersey City, New Jersey

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: Member and Associated Person vs. Member and Associated Person

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Hickory Capital, LLC: Douglas Craig Evans, Hillsdale, New Jersey.

Claimant Douglas Craig Evans (“Evans”) appeared pro se.

For Respondent GWFS Equities, Inc. (“GWFS”): Michael R. Greco, Esq., Fisher & Phillips LLP, Denver, Colorado.

For Respondent Kevin Michael Sullivan (“Sullivan”): Timothy J. Perry, Esq., Perry Krumsiek LLP, Boston, Massachusetts.

CASE INFORMATION

Statement of Claim filed on or about: September 30, 2019.

Amended Statement of Claim filed on or about: May 12, 2020.

Answer to Amended Answer and Counterclaim filed on or about: June 15, 2020.

Hickory Capital, LLC signed the Submission Agreement: September 30, 2019.

Douglas Craig Evans signed the Submission Agreement: September 30, 2019.

Statement of Answer filed by GWFS Equities, Inc. on or about: January 8, 2020.

GWFS Equities, Inc. signed the Submission Agreement: January 8, 2020.

Statement of Answer filed by Kevin Michael Sullivan on or about: January 8, 2020.
Amended Answer and Counterclaim filed on or about: June 12, 2020.
Kevin Michael Sullivan signed the Submission Agreement: January 8, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: defamation and failure to supervise.

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

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

In the Counterclaim, Respondent Sullivan asserted the following cause of action: intentional infliction of emotion distress.

Unless specifically admitted in the Answer to the Counterclaim, Claimants denied the allegations made in the Respondent Sullivan's Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested a finding that the material posted is defamatory; leave to initiate an arbitration action or other legal efforts at other fora to seek to have the defamatory postings removed; an award for damages of \$999,000.00; punitive damages; costs and expenses; and any other relief deemed fair and reasonable.

In the Amended Statement of Claim, Claimant clarified that the request for damages of \$999,000.00 is for compensatory and punitive damages, or a combination of both.

In the Statement of Answer, Respondent GWFS requested that Claimants' request for relief in the Statement of Claim be denied and dismissed with prejudice in its entirety and that GWFS be granted all other relief, in law or in equity, as deemed just and proper.

In the Statement of Answer, Respondent Sullivan requested for all costs and expenses associated with this complaint; any other relief deemed fair and reasonable; and issuance of an appropriate injunction against Evans.

In the Amended Statement of Answer and Counterclaim. Respondent Sullivan requested for all costs and expenses associated with this complaint; \$50,000.00 for emotional distress; any other relief deemed fair and reasonable; punitive damages; and issuance of an appropriate injunction against Claimants.

In the Answer to Respondent Sullivan's Counterclaim, Claimants requested that the Counterclaim be denied.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 12, 2020, Claimants filed a Motion to Amend to Clarify Damages. On May 13, 2020, Respondent GWFS filed an Opposition to Claimants Motion to Amend to Clarify Damages. By Order dated May 30, 2020, the Panel granted Claimants' Motion to Amend the Statement of Claim.

On May 19, 2020 Respondent Sullivan filed a Motion to Amend Answer to file Counterclaim and to Compel. On May 26, 2020, Claimants filed an Opposition to Sullivan's Motion to Amend and to Compel. By Order dated June 9, 2020, the Panel granted Respondent Sullivan's Motion to Amend Answer to file Counterclaim.

On September 15, 2020, Claimants filed a Motion for Sanctions Against Respondent Sullivan. Respondent Sullivan did not file a response. By Order dated November 18, 2020, the Panel denied Claimants' Motion for Sanctions.

On September 25, 2020, Respondent Sullivan filed notice of dismissal of Counterclaim against Claimants.

On September 26, 2020, Respondent Sullivan filed a Motion to Dismiss for Failure to State a Claim pursuant to Rule 13504 of the Code of Arbitration Procedure ("Code"). Claimant did not file a response. On December 2, 2020, the Panel heard oral arguments on the Motion to Dismiss. On December 6, 2020, the Panel deferred a decision on the Motion to Dismiss until the completion of the Claimants' case-in-chief.

On September 28, 2020, Claimants filed a Motion to Sanction and Dismiss Respondent Sullivan's Defenses. On October 8, 2020, Respondent GWFS filed an Opposition to Claimants' Motion to Sanction and Dismiss Respondent Sullivan's Defenses. On October 9, 2020, Claimants filed a Reply in Support of their Motion to Sanctions and Dismiss Respondent Sullivan's Defenses. By Order dated November 18, 2020, the Panel denied Claimants' Motion to Sanction and Dismiss Sullivan's Defenses.

On February 4, 2021 Claimants filed a Second Motion to Amend the Statement of Claim. On February 16, 2021, Respondent GWFS filed an Opposition to Claimants Second Motion to Amend the Statement of Claim. On February 17, 2021, Claimants filed a Reply in Support of their Second Motion to Amend the Statement of Claim. On February 17, 2021, Respondent GWFS filed a Sur-Reply to Claimant's Second Motion to Amend the Statement of Claim. By Order dated March 18, 2021, the Panel denied Claimants' Second Motion to Amend their Statement of Claim.

At the conclusion of Claimants' case-in-chief, Respondents GWFS and Sullivan both made a Motions to Dismiss. Respondent GWFS moved to dismiss the Statement of Claim against it primarily because the alleged defamation statement posted by Respondent Sullivan on the internet did not happen within the scope of Respondent Sullivan's employment. Respondent Sullivan moved to dismiss on the ground that one or more of the elements of proof for a claim of defamation had not been establish by Claimants at the hearing. Claimants opposed both motions on the

ground that the alleged defamatory statement posted on the internet was per se defamatory to the Claimant’s business reputation and that the statement was made in the scope of Respondent Sullivan’s work while he was employed by Respondent GWFS and in which, as Claimants argued, Respondent GWFS had an obligation to properly supervise Respondent Sullivan.

The basis for granting both Respondents’ Motions to Dismiss was placed on the record during the hearing. After hearing the testimony during the Claimants’ case-in-chief and after reviewing the submissions therein, including the entire alleged defamatory internet posting, the Panel concluded that the Claimants failed to establish that the alleged defamatory posting was a false statement of fact about the Claimants, a necessary element of their case. The Panel found the statement to be only an expression of Respondent Sullivan’s view or opinion, which the Claimants could have either rebutted or could have filed a dispute on the same website in which the Statement was posted, which they chose not to do. In addition, the Panel found that based upon the testimony presented at the hearing, the Claimants could not establish that Respondent Sullivan, putting aside the alleged defamatory nature of the statement, made the statement in the scope of his employment with the Respondent GWFS.

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. Claimants’ claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, and attorneys’ fees, are denied.

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	= \$ 2,550.00
Counterclaim Filing Fee	= \$ 600.00

**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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Hickory Capital, LLC and GWFS Equities, Inc. are each assessed the following:

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

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

One (1) decision on a discovery-related motion on the papers with the Panel @ \$600.00/decision WAIVED

Five (5) decisions on discovery-related motions on the papers with the Panel @ \$600.00/decision = \$ 3,000.00

Claimants submitted four (4) discovery-related motions
Respondent Sullivan submitted 2 (two) discovery-related motions
Respondent GWFS submitted 2 (two) discovery-related motions

Total Discovery-Related Motion Fees = \$ 3,400.00

The Panel has assessed \$1,750.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$250.00 of the discovery-related motion fees jointly and severally to Respondents.

The Panel has assessed \$1,200.00 of the discovery-related motion fees to Respondent Kevin Michael Sullivan.

The Panel has assessed \$200 of the discovery-related motion fees to Respondent GWFS Equities, Inc.

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:

Seven (7) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 9,100.00

Pre-Hearing Conferences: March 10, 2020 1 session
July 13, 2020 1 session
July 30, 2020 1 session
October 21, 2020 1 session
November 17, 2020 1 session
March 16, 2021 1 session
March 24, 2021 1 session

Five (5) hearing sessions @ \$1,300.00/session = \$ 6,500.00

Hearings: April 6, 2021 2 sessions
April 7, 2021 2 sessions
April 8, 2021 1 session

Total Hearing Session Fees = \$ 15,600.00

The Panel has assessed \$9,100.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,600.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,625.00 of the hearing session fees to Respondent GWFS Equities, Inc.

The Panel has assessed \$2,275.00 of the hearing session fees to Respondent Kevin Michael Sullivan.

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

ARBITRATION PANEL

Paul Allan Massaro	-	Public Arbitrator, Presiding Chairperson
Lisa Diane Love	-	Public Arbitrator
Joan Marie Chiusano	-	Non-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

Paul Allan Massaro

Paul Allan Massaro
Public Arbitrator, Presiding Chairperson

05/11/2021

Signature Date

Lisa Diane Love

Lisa Diane Love
Public Arbitrator

05/11/2021

Signature Date

Joan Marie Chiusano

Joan Marie Chiusano
Non-Public Arbitrator

05/10/2021

Signature Date

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May 12, 2021

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