

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Christopher J. Portante
Karen T. Portante

Case Number: 19-02966

vs.

Respondent

Money Concepts Capital Corp.

Hearing Site: Birmingham, Alabama

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

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Christopher J. Portante (“Christopher Portante”) and Karen T. Portante (“Karen Portante”): Samuel B. Edwards, Esq., Shepherd, Smith, Edwards & Kantas, LLP, Houston, Texas.

Hereinafter, Christopher Portante and Karen Portante are collectively referred to as “Claimants”.

For Respondent Money Concepts Capital Corp.: Kathy M. Klock, Esq., Akerman LLP, West Palm Beach, Florida.

*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: October 1, 2019.

Claimants signed the Submission Agreement: September 30, 2019.

Statement of Answer and Defenses filed by Respondent on or about: December 18, 2019.

Respondent signed the Submission Agreement: November 19, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of state securities statutes; and misrepresentation. The causes of action relate to an investment in GPB Capital.

In the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

An award be entered ordering Respondent to pay to an amount of between \$100,000.00 and \$500,000.00, including all direct and/or consequential damages and statutory and/or punitive damages; plus interest and costs as provided by statute, in an amount which Claimants reserve the right to amend at any time including during hearings held on these matters, as follows:

- a. All sums lost in Claimants' accounts on any or all transactions made or not made;
- b. All lost opportunity incurred as a result of acts and/or omissions;
- c. Rescission of any or all transactions as sought;
- d. Statutory damages as provided by applicable law;
- e. Punitive damages in an amount that the Panel shall deem appropriate;
- f. Pre-award and pre-judgment interest on all sums invested from the date deposited until the date of the award and/or judgment and until such sums are paid, all at the highest rate allowed by law;
- g. All costs of these proceedings and for recovery of damages incurred, including legal fees, including while on appeal, if any, and for collection; and
- h. Any and all other relief available to Claimants, in law or equity or otherwise, which may be granted by this Panel.

In the Statement of Answer, Respondent requested:

1. Dismissal of Claimants' claims alleged in the Statement of Claim in their entirety;
2. Attorneys' fees;
3. Forum fees; and
4. Other costs and expenses incurred by Respondent in defending this claim.

Respondent filed a request for expungement, on behalf of Unnamed Party Christopher William Keelin ("Keelin"), of all references to this matter from 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 October 6, 2020, 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. Claimants further noted that Respondent requested that this matter remain open until the Panel conducts an expungement hearing and that Respondent would be responsible for all costs related to that hearing.

On October 20, 2020, Respondent filed a motion for expungement on behalf of Keelin to which no response was filed.

The Panel conducted a recorded hearing by videoconference on April 20, 2021, so the parties could present oral argument and evidence on Keelin's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Keelin'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 Keelin did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimants' Statement of Claim; Respondent's motion for expungement on behalf of Keelin; Keelin's BrokerCheck® Report; the settlement agreement; and Keelin's testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, 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 2052258) from registration records maintained by the CRD for Unnamed Party Christopher William Keelin (CRD Number 1455741) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Christopher William Keelin 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:

The Panel heard the detailed testimony of Keelin and reviewed the exhibits admitted into evidence, as well as the Statement of Claim, from which the Panel unanimously concluded that the conduct ascribed to Keelin in the Statement of Claim did not occur as alleged. Not only did Keelin’s testimony refute the factual allegations concerning Claimants’ purchase of the security at issue, but also the documentary evidence of disclosures acknowledged by Claimants was directly at odds with the allegations in the Statement of Claim.

- 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, 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 900.00
Pre-Hearing Conferences: September 25, 2020 1 session
October 2, 2020 1 session

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: January 22, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: April 20, 2021 1 session

Total Hearing Session Fees = \$ 3,150.00

The Panel has assessed \$1,012.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,137.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Earle J. Schwarz	-	Public Arbitrator, Presiding Chairperson
James Edward Seale	-	Public Arbitrator
Geraldine R Daniels	-	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

Earle J. Schwarz

Earle J. Schwarz
Public Arbitrator, Presiding Chairperson

04/30/2021

Signature Date

James Edward Seale

James Edward Seale
Public Arbitrator

05/01/2021

Signature Date

Geraldine R Daniels

Geraldine R Daniels
Public Arbitrator

05/01/2021

Signature Date

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May 03, 2021

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