

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Marie Mesmer

Case Number: 19-03052

vs.

Respondents
Raymond James Financial Services, Inc.
Ka Ki Kenneth Leung

Hearing Site: San Francisco, California

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. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Marie Mesmer (“Claimant”): Tiega-Noel Varlack, Esq., Varlack Legal Services, Hayward, California.

For Respondents Raymond James Financial Services, Inc. (“RJFS”) and Ka Ki Kenneth Leung (“Leung”): Chad Weaver, Esq., Freeman Mathis & Gary LLP, Seal Beach, California.

Hereinafter, RJFS and Leung will collectively be referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: October 18, 2019.

Claimant signed the Submission Agreement: October 18, 2019.

Statement of Answer filed by Respondents on or about: December 16, 2019.

RJFS signed the Submission Agreement: November 6, 2019.

Leung signed the Submission Agreement: December 20, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; breach of covenant of good faith and fair dealing; breach of fiduciary duty; violation of Business and Professions Code; common counts; intentional misrepresentation; and constructive trust. The causes of action relate to alleged mismanagement of Claimant's investment account held at RJFS.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. General damages, including, without limitation, for physical harm and mental and emotional distress;
2. Compensatory damages;
3. Disgorgement and restitution;
4. Punitive damages and statutory penalties;
5. Interest, including prejudgment interest, at the legal rate;
6. Attorneys' fees;
7. Costs of suit incurred;
8. Preliminary and permanent injunction forbidding Respondents from continuing to make use of the unlawful business practice detailed in the complaint; and
9. Such other and further relief as the Panel deems appropriate.

In the Statement of Answer, Respondents requested:

1. Claimant's Statement of Claim be denied in its entirety, including all requests for relief and damages; and
2. Expungement of this matter from Leung's Central Registry Depository ("CRD") records.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Panel conducted a recorded hearing by videoconference on October 12 through October 15, 2021, so the parties could present oral argument and evidence on the merits of the evidentiary hearing as well as Leung's request for expungement.

All parties participated in the evidentiary and expungement hearing. Claimant opposed Leung's request for expungement.

The Panel reviewed Leung'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 noted that the dispute related to Occurrence Number 2031270 was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim; exhibits; and testimony provided by Claimant at the evidentiary hearing.

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. Claimant's claims are denied in their entirety.
2. The parties shall each bear their own costs and expenses incurred in this matter.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2031270) from registration records maintained by the CRD for Respondent Ka Ki Kenneth Leung (CRD Number 5294353) with the understanding that, pursuant to Notice to Members 04-16, Respondent Ka Ki Kenneth Leung 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:

In addition to Leung's testimony regarding his handling of the account at issue, the unopposed and unchallenged testimony of Respondents' expert witness, in the case in chief, was impressive. The witness, a former Senior Compliance Examiner, Supervisor of Examiners and Associate District Director for NASD, District 7, testified that he had reviewed every single transaction request and execution conducted in the account at issue during the time at issue and found that the transactions and executions were fully compliant with existing regulations. He reviewed all account statements and found that they were complete and properly addressed to the account holder. He stated that Leung's opening of the account was proper, that the Trust Certification and Client Agreement form were proper and that Leung had no duty to question withdrawals requested by either of the trustees and had no duty to make certain that Claimant was reviewing her statements. He was never advised that Claimant's former husband was removing the monthly statements from the mail.

The Panel found that it was Claimant's former husband, and not Leung, who was responsible for the withdrawals and diminution in value of the accounts. There was no realistic and believable testimony placing blame on Leung.

4. 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 = \$ 1,575.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, RJFS 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 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 27, 2020 1 session
September 21, 2020 1 session

Seven (7) hearing sessions @ \$1,125.00/session = \$ 7,875.00
Hearings: October 12, 2021 2 sessions
October 13, 2021 2 sessions
October 14, 2021 2 sessions
October 15, 2021 1 session

Total Hearing Session Fees = \$ 10,125.00

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

The Panel has assessed \$9,000.00 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

William W. Haskell	-	Public Arbitrator, Presiding Chairperson
Thomas D. Reese	-	Public Arbitrator
David I. Levine	-	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

William W. Haskell

William W. Haskell
Public Arbitrator, Presiding Chairperson

10/25/2021

Signature Date

Thomas D. Reese

Thomas D. Reese
Public Arbitrator

10/25/2021

Signature Date

David I. Levine

David I. Levine
Public Arbitrator

10/25/2021

Signature Date

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October 26, 2021

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