

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Barry E. Loughrane Revocable Trust

Case Number: 19-03215

vs.

Respondents

Lincoln Financial Advisors Corporation
Moors & Cabot, Inc.

Hearing Site: New York, New York

vs.

Third Party Respondent

Paul Wilfred Majane

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 vs. Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Barry E. Loughrane Revocable Trust: Jenice Malecki, Esq., Malecki Law, New York, New York.

For Respondent Lincoln Financial Advisors Corporation (“Lincoln Financial”): Eric Michaels, Esq., Saretsky Hart Michaels & Gould, Birmingham, Michigan.

For Respondent Moors & Cabot, Inc. (“Moors & Cabot”): Robert A. Giacovas, Esq., Lazare Potter Giacovas & Moyle LLP, New York, New York.

For Third-Party Respondent Paul Wilfred Majane (“Majane”): Robert J. Harvey, Esq., Jenks & Harvey LLP, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed on or about: October 25, 2019.

Barry E. Loughrane Revocable Trust signed the Submission Agreement: October 23, 2019.

Statement of Answer and Third-Party Claim filed by Respondent Lincoln Financial on or about: February 3, 2020.

Lincoln Financial signed the Submission Agreement: February 6, 2020.

Statement of Answer and Third-Party Claim filed by Respondent Moors & Cabot on or about: February 3, 2020.

Moors & Cabot signed the Submission Agreement: June 24, 2020.

Statement of Answer to Third-Party Claims filed by Third-Party Respondent Majane on or about: March 19, 2020.

Majane signed the Submission Agreement: March 19, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; violation of industry rules; breach of fiduciary duty; negligence/gross negligence; common law and statutory fraud; aiding and abetting; misrepresentation, omissions, violation of New York General Business Law § 349; failure to supervise, and violation of securities laws and industry rules. The causes of action relate to Omnicom Group, Inc. stock and investment in a Prepaid Variable Forward Contract and a variable annuity.

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

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

In the Third-Party Claim, Respondent Lincoln Financial asserted the following cause of action: contribution.

In the Third-Party Claim, Respondent Moors & Cabot asserted the following causes of action: indemnification and/or contribution.

Unless specifically admitted in the Statement of Answer, Third-Party Respondent Majane denied the allegations made in the Third-Party Claims and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages of not less than \$1,486,278.29; \$520,000.00 in unnecessary taxes; well managed theory damages in an amount to be proven: interest; arbitration fees, costs and expenses; attorneys' fees; expert witness fees; punitive damages; and such other and further relief as the Panel deems just and proper under the circumstances.

In the Statement of Answer and Third-Party Claim, Respondent Lincoln Financial requested that the Statement of Claim be denied in its entirety; an award against Majane for the full amount of any award rendered in favor of the Claimant or in an amount equal to the excess over and above Lincoln Financial's equitable share of any such award.

In the Statement of Answer and Third-Party Claim, Respondent Moors & Cabot requested that all claims in the Statement of Claim be denied; the Panel assess all forum fees to the Claimant, and expunge all claims from the FINRA records of any team member. If the Panel finds that the Trust did suffer some amount of damages, those damages should be borne wholly or partially by Third-Party Respondent Majane.

In the Statement of Answer to the Third-Party Claim, Third-Party Respondent Majane requested that the Panel deny Respondents' Third-Party Claims and enter an award against the Respondents and in favor of Majane, and assess all forum fees against Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 20, 2021, Claimant notified FINRA Dispute Resolution Services that all parties in this matter settled their claims against one another and agreed to dismiss their claims with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim and the Third-Party Claims.

On May 20, 2021, Respondent Moors & Cabot requested that this matter remain open solely for the purpose of determining the issue of expungement of the CRD record of Unnamed Party Michael Egan ("Egan") in relation to Claimant's allegations.

The Panel conducted recorded hearings by videoconference on September 16 and 23, 2021, so the parties could present oral argument and evidence on Respondent Moors & Cabot's request for expungement on behalf of Unnamed Party Egan.

Claimant participated in the expungement hearing and did not oppose the request for expungement.

Respondent Lincoln Financial did not participate in the expungement hearing and did not oppose the request for expungement.

Third-Party Respondent Majane participated in the expungement hearing and objected to certain evidence presented, but did not oppose the request for expungement.

The Panel reviewed Unnamed Party Michael Egan'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 Unnamed Party Egan did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; the settlement agreement; Unnamed Party Egan's BrokerCheck® Report and his testimony; and the exhibits.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, 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 2055483) from registration records maintained by the CRD for Unnamed Party Michael Egan (CRD Number 2124653) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Michael Egan 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and

The Panel has made the above Rule 2080 finding based on the following reasons:

Through testimony and documentary evidence, the party requesting expungement established to the satisfaction of the Panel that: (1) the Statement of Claim mentioned both an employee of Respondent Lincoln Financial and Mr. Majane, but neither Mr. Egan nor anyone else at Respondent Moors & Cabot as having engaged in wrongdoing or misleading Claimant; (2) uncontroverted testimony of Mr. Egan established that Claimant was referred to and brought to Mr. Egan, an employee of Respondent Moors & Cabot, by its own financial advisors including Mr. Majane for the purpose of executing a very specific financial transaction to cure the overconcentration of Claimant's investments and to provide liquidity to Claimant; (3) documentary evidence support Mr. Egan's assertion that he and Respondent Moors & Cabot had a limited and specific role to play in the investment at issue, and that they did not have access to the full picture of Claimant's financial portfolio and financial status; (4) Claimant admitted in testimony that Mr. Egan

was on multiple telephone calls with Claimant to explain each investment and answer questions; (5) Mr. Majane was Claimant's financial advisor of more than 40 years and was fully familiar with Claimant's entire financial history, portfolio and goals and recommended Respondent Moors & Cabot, after conducting research into which firms had expertise in the investment strategy already decided upon; and (6) Mr. Egan and Respondent Moors & Cabot were simply "middle men" executing on directives from a well-informed and sophisticated customer who had financial advisers, lawyers and accountants at its disposal to guide and advise Claimant on the full consequences of the investment at issue, in light of Claimant's entire financial portfolio and objectives. As a result, the Panel declines to support Claimant's effort to hold Mr. Egan responsible for not knowing or taking into account information that was never disclosed to him or Respondent Moors & Cabot.

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	= \$ 2,000.00
Third Party Claim Filing Fee- Lincoln Financial	= \$ 3,400.00
Third Party Claim Filing Fee- Moors & Cabot	= \$ 3,400.00

**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 person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Lincoln Financial and Moors & Cabot are each assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

Late Pre-Hearing Cancellation Fees

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

May 24, 2021, settled by Parties	= \$ 300.00
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Total Late Pre-Hearing Cancellation Fees	= \$ 300.00

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$75.00 of the late pre-hearing cancellation fees to Respondent Lincoln Financial.

The Panel has assessed \$75.00 of the late pre-hearing cancellation fees to Respondent Moors & Cabot.

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:

One (1) pre-hearing session with the Panel @ \$1,400.00/session	= \$	1,400.00
Pre-Hearing Conference: June 22, 2020	1 session	
Three (3) hearing sessions on expungement request @ \$1,400.00/session	= \$	4,200.00
Hearings: September 16, 2021	1 session	
September 23, 2021	2 sessions	
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Total Hearing Session Fees	= \$	5,600.00

The Panel has assessed \$700.00 of the hearing session fees to Claimant.

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to Respondents Lincoln Financial and Moors & Cabot, and Third-Party Respondent Majane.

The Panel has assessed the \$2,800.00 expungement hearing session fees to Respondent Moors & Cabot.

The Panel has waived the \$1,400.00 hearing session fees for the September 16, 2021 hearing.

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

ARBITRATION PANEL

Jill Pilgrim	-	Public Arbitrator, Presiding Chairperson
David Holmes	-	Public Arbitrator
Richard H Leitman	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Jill Pilgrim

Jill Pilgrim
Public Arbitrator, Presiding Chairperson

11/02/2021

Signature Date

David Holmes

David Holmes
Public Arbitrator

11/03/2021

Signature Date

Richard H Leitman

Richard H Leitman
Public Arbitrator

10/29/2021

Signature Date

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November 05, 2021

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