

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John C. Holborn

Case Number: 19-03321

vs.

Respondents
Cadaret, Grant & Co., Inc.
CNL Securities Corp.
David Scott Shapiro

Hearing Site: Buffalo, New York

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 Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant John C. Holborn: Bradford M. Gucciardo, Esq., Gucciardo Law Group, PA, Lakewood Ranch, Florida.

For Respondents CNL Securities Corp. (“CNL”) and David Scott Shapiro (“Shapiro”): Jonathan E. Green, Esq., Arnold & Porter Kaye Scholer LLP, New York, New York.

For Respondent Cadaret, Grant & Co., Inc. (“Cadaret”): David G. Buffa, Esq., Bressler, Amery & Ross, PC., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 6, 2019.

John C. Holborn signed the Submission Agreement: November 6, 2019.

Joint Statement of Answer filed by Respondents CNL and Shapiro on or about: February 18, 2020.

CNL Securities Corp. signed the Submission Agreement: February 18, 2020.

David Scott Shapiro signed the Submission Agreement: February 18, 2020.

Statement of Answer filed by Respondent Cadaret on or about: February 18, 2020.

Cadaret, Grant & Co., Inc. did not sign the Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: common law fraud, breach of fiduciary duty, negligence (gross negligence), and breach of contract. The causes of action relate to Welsch/CNL Properties I, LLC Real Estate Investment Trust.

Unless specifically admitted in the Joint Statement of Answer, Respondents CNL and Shapiro denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$150,000.00; punitive damages in the amount of \$300,000.00; pre-judgment and post-judgment interest at the legal rate; costs; attorneys' fees; and such further relief as the Panel deems just and appropriate.

In the Statement of Answer, Respondents CNL and Shapiro requested that the Panel issue an Order dismissing Claimant's claims with prejudice, recommending expungement of any reference of this matter from the CRD record of any affected current or former CNL registered representative, and awarding attorneys' fees, costs, disbursements, and forum fees.

In the Statement of Answer, Respondent Cadaret requested that the Panel issue an Order dismissing Claimant's claims in their entirety, recommending expungement of any reference of this matter from the CRD record of any affected registered representatives, and awarding any other and further relief the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 5, 2020, Respondent Cadaret filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On July 6, 2019, Claimant filed a response opposing the Motion to Dismiss, and on July 13, 2020, Respondent Cadaret filed a Reply.

On June 12, 2020, Respondents CNL and Shapiro filed a Joint Motion to Dismiss pursuant to Rule 12206 of the Code. On July 24, 2019, Claimant filed a response opposing the Motion to Dismiss and on August 3, 2020, Respondents CNL and Shapiro filed a Reply.

On August 19, 2020, the Panel heard oral arguments on the Motions to Dismiss. On August 25, 2020, the Panel granted the Motions to Dismiss on the following grounds that:

According to FINRA Rule 12206(a), no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim. After reviewing the above referenced pleadings and listening to the oral arguments during the Prehearing Conference on the two Motions to Dismiss, the Panel determined that the

“occurrence or event that gave rise to the claim” occurred in March 2007, when the Claimant purchased his investment in Welsh/CNL Property I, and acknowledged and signed the Private Placement Memorandum and the Subscription Documents and Agreement. The claim was filed on November 6, 2019 which fell outside of the time limit to file a claim. The Panel determined that tolling or extending the 6 year eligibility period was not warranted in this case. Therefore, the Panel unanimously ruled that both Motions to Dismiss should be granted. The Claimant’s request for the Panel to deem these Motions to Dismiss as frivolous motions was denied.

Respondents’ Motions to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 12206(b) of the Code.

On November 25, 2020, Respondent Shapiro filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on December 15, 2020 so the parties could present oral argument and evidence on Respondent Shapiro’s request for expungement.

Claimant (and counsel) did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed the BrokerCheck® Report for Respondent Shapiro. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the Central Registration Depository (“CRD”).

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings, exhibits, Claimant’s testimony, and Claimant’s BrokerCheck Report.

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. Respondents CNL and Shapiro’s Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 12206(b) of the Code.
2. Respondent Cadaret’s Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 12206(b) of the Code.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2067592) from registration records maintained by the CRD for Respondent David Scott Shapiro (CRD Number 2857195) with the understanding that, pursuant to Notice to Members 04-16, Respondent David Scott Shapiro 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 factually impossible or clearly erroneous.

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

After reviewing Respondent David S. Shapiro's Motion for Expungement and listening to the oral arguments and testimony of Mr. Shapiro, the Panel finds that Claimant's allegations against Mr. Shapiro are factually impossible. The great preponderance of the evidence presented showed that Mr. Shapiro had no involvement in recommending Claimant's purchase of the investment in March 2007 and had no personal communications with the Claimant prior to or at the time of the purchase, which makes the claim therefore, factually impossible. For these reasons, expungement of this matter from David S. Shapiro's CRD is appropriate.

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 = \$ 1,425.00

**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimant's filing fee of \$ 1,425.00. Upon conclusion of the matter, the Panel determined to waive the \$300.00 non-refundable portion of the filing fee.

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 CNL Securities Corp. and Cadaret, Grant & Co., Inc. are each 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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-hearing Conferences: March 2, 2020	1 session	
August 19, 2020	1 session	
November 11, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing Date: December 15, 2020	1 session	
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Total Hearing Session Fees	= \$	4,500.00

The Panel has assessed \$937.50 of the hearing session fees to Claimant.
The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents CNL, Shapiro, and Cadaret.
The Panel has assessed \$375 of the hearing session fees to Respondent Cadaret.
The Panel has assessed \$375.00 of the hearing session fees jointly and severally to Respondents CNL and Shapiro.
The Panel has assessed \$2,250.00 of the hearing session fees, including the expungement hearing, to Respondent Shapiro.

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

ARBITRATION PANEL

Kathleen P. Helbig-Hannan	-	Public Arbitrator, Presiding Chairperson
Tracy L. Allen	-	Public Arbitrator
Gerald Grace, Jr.	-	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

Kathleen P. Helbig-Hannan

Kathleen P. Helbig-Hannan
Public Arbitrator, Presiding Chairperson

01/22/2021

Signature Date

Tracy L. Allen

Tracy L. Allen
Public Arbitrator

01/25/2021

Signature Date

Gerald Grace, Jr.

Gerald Grace, Jr.
Public Arbitrator

01/24/2021

Signature Date

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January 25, 2021

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