

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Elden LTD,
Pablo Jose Hernandez,
Lorenia Bustamante-Ibarra,
Gloria Nunez de Landavazo
Salvador Garcia-Ledesma,
Humberto Peniche,
Eugenio Sanchez, and
Jessica Maria Sordo

Case Number: 19-03356

vs.

Respondent

Pershing LLC

Hearing Site: Houston, Texas

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 Elden LTD, Pablo Jose Hernandez, Lorenia Bustamante-Ibarra, Gloria Nunez de Landavazo, Salvador Garcia-Ledesma, Humberto Peniche, Eugenio Sanchez, and Jessica Maria Sordo (collectively, “Claimants”): Michael J. Stanley, Esq., Stanley Law, P.C., Houston, Texas and Sam Edwards, Esq. and David Miller, Esq., Shepherd Smith Edwards & Kantas, LLP, Houston, Texas.

For Respondent Pershing LLC (“Respondent”): Thomas M. Farrell, Esq., McGuireWoods LLP, Houston, Texas and Jeffrey J. Chapman, Esq., McGuireWoods LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 12, 2019.

Claimants signed the Submission Agreement: November 8, 2019.

Statement of Answer filed by Respondent on or about: January 2, 2020.

Respondent did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: common law and constructive fraud, negligent misrepresentation, negligence, breach of fiduciary duty, breach of contract, violation of FINRA conduct Rule 3310, violation of FINRA Rule 2020, violation of FINRA Rule 2010, aiding and abetting breach of fiduciary duty, respondeat superior/violation of FINRA Rule 3110, and aiding and abetting violation of the Texas securities act. The causes of action related to Claimants' allegation that Respondent, acting as custodian and clearing firm for Stanford Group Company ("SGC"), gave material assistance to a Ponzi scheme, involving certificates of deposit ("CDs") issued by Stanford International Bank, Ltd. and recommended by SGC financial advisors. Claimants further alleged that, despite having knowledge of troubling facts about the CDs and SGC, Respondent continued to provide validation and assistance.

Unless specifically admitted 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:

- a. An award of approximately \$3,500,000.00;
- b. Compensation for Claimants' loss of use of capital;
- c. Disgorgement of all benefits and monies Respondent obtained as a result of its relationship with SGC;
- d. Punitive damages in an amount at least three times the amount of compensatory damages;
- e. Pre-judgment and post-judgment interest, at the legal rate;
- f. All costs and fees incurred in this action, including all forum fees, expert witness-related fees, and any additional costs/fees incurred;
- g. Attorneys' fees; and
- h. Such further relief as the Panel deems just and appropriate.

In the Statement of Answer, Respondent requested that Claimants' Statement of Claim be denied.

In Claimants' Post-Hearing Brief, Claimants requested \$7,988,569.80 in damages, including compensatory damages, statutory interest, litigation expenses, and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim and appeared through a representative at the hearing, is bound by the determination of the Panel on all issues submitted.

On March 24, 2020, Respondent filed a Motion to Dismiss Claims That Are Ineligible for Submission to FINRA Arbitration Pursuant to FINRA Rule 12206 (“Motion to Dismiss”). On April 8, 2020, Claimants filed a Response to the Motion to Dismiss. On April 13, 2020, Respondent filed a Reply in Support of the Motion to Dismiss. On May 12, 2020, Claimants filed a Supplemental Opposition to the Motion to Dismiss. On May 14, 2020, the Panel heard oral arguments on the Motion to Dismiss. In an order dated the same day, the Panel denied the Motion to Dismiss.

On December 7, 2020, Claimants filed a Request for Order Compelling Virtual Arbitration (“Request for Virtual Hearing”). On December 21, 2020, Respondent filed a Response in Opposition to the Request for Virtual Hearing. On December 24, 2020, Claimants filed a Reply to the Response in Opposition to the Request for Virtual Hearing. In an Order dated January 8, 2021, the Panel granted the Request for Virtual Hearing.

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

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. Respondent is liable for and shall pay to Claimants the sum of \$750.00 in costs as reimbursement for the non-refundable portion of Claimants’ filing fee.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble 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	= \$ 2,250.00
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**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	= \$ 4,025.00
Member Process Fee	= \$ 7,000.00

Late Pre-Hearing Cancellation Fees

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

November 23, 2020, cancellation requested jointly by both sides	= \$	100.00
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Total Late Pre-Hearing Cancellation Fees	= \$	100.00

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees, jointly and severally, to Claimants.

The Panel has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

February 10, 2021, postponement requested jointly by both sides	= \$	1,500.00
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Total Postponement Fees	= \$	1,500.00

The Panel has assessed \$750.00 of the postponement fees, jointly and severally, to Claimants.

The Panel has assessed \$750.00 of the postponement fees to Respondent.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

February 10, 2021, cancellation requested jointly by both sides	= \$	1,800.00
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Total Last-Minute Cancellation Fees	= \$	1,800.00

The Panel has assessed \$900.00 of the last-minute cancellation fees, jointly and severally, to Claimants.

The Panel has assessed \$900.00 of the last-minute cancellation fees to Respondent.

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: November 16, 2020	1 session	
Two (2) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$	3,000.00
Pre-Hearing Conferences: February 27, 2020	1 session	
May 14, 2020	1 session	

Fifteen (15) hearing sessions @ \$1,500.00/session		= \$ 22,500.00
Hearings:		
	February 1, 2021	2 sessions
	February 2, 2021	2 sessions
	February 3, 2021	2 sessions
	February 4, 2021	2 sessions
	February 5, 2021	2 sessions
	February 8, 2021	2 sessions
	February 9, 2021	2 sessions
	February 11, 2021	1 session
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Total Hearing Session Fees		= \$ 25,950.00

The Panel has assessed \$23,475.00 of the hearing session fees, jointly and severally, to Claimants.

The Panel has assessed \$2,475.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Allan R. Lazor	-	Public Arbitrator, Presiding Chairperson
Joshua Charles Nelson-Archer	-	Public Arbitrator
Denise Ereka Peterson	-	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

Allan R. Lazor

Allan R. Lazor
Public Arbitrator, Presiding Chairperson

03/12/2021

Signature Date

Joshua Charles Nelson-Archer

Joshua Charles Nelson-Archer
Public Arbitrator

03/12/2021

Signature Date

Denise Ereka Peterson

Denise Ereka Peterson
Public Arbitrator

03/11/2021

Signature Date

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.

March 12, 2021

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