

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Scottow A. King and  
Camille C. King

Case Number: 19-03553

vs.

Respondent

Merrill Lynch, Pierce, Fenner & Smith Inc.

Hearing Site: Dallas, Texas

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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.

**REPRESENTATION OF PARTIES**

For Claimants Scottow A. King and Camille C. King (“Claimants”): Jeffrey Erez, Esq., Erez Law, PLLC, Miami, Florida.\*

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Jeff Goldman, Esq., and Daniel J. Ball, Esq., Morgan Lewis & Bockius LLP, Boston, Massachusetts.

\*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: December 2, 2019.

Claimants signed the Submission Agreement: November 25, 2019.

Statement of Answer filed on or about: January 22, 2020.

Respondent signed the Submission Agreement: December 17, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, negligent supervision, fraud, breach of contract, violation of sections 10(b) of

the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission, and violation of the Texas Securities Act. The causes of action related to Claimants' allegations that Respondent recommended that Claimants open a new account to invest in the Harvest Volatility Management, LLC ("Harvest") Collateral Yield Enhancement Strategy ("CYES"), which Claimants asserted was a high risk and unsuitable options investment strategy that Respondent falsely represented as a low risk strategy.

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 compensatory damages between \$100,000.00 and \$500,000.00; rescission, punitive damages, interest, costs, attorneys' fees, and such other and further relief the Panel deems just and proper.

In the Statement of Answer, Respondent requested denial of the Statement of Claim in its entirety and expungement of all references to this matter from the registration records of Unnamed Party Gordon Huntington Harper ("Harper") maintained by the Central Registration Depository ("CRD"). 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 May 24, 2021, Claimants filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On June 9, 2021, Respondent filed a Motion for Expungement on behalf of Harper, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on July 21, 2021, so the parties could present oral argument and evidence on Harper's request for expungement.

Neither Claimants nor Claimants' counsel participated in the expungement hearing.

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

In recommending expungement, the Panel relied upon the following documentary or other evidence: Respondent's Exhibit Numbers 3, 4, 5, 7, 8, 9, 11, 14, 15, and 17; Harper's testimony; and the testimony of PK.

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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2056891) from registration records maintained by the CRD for Unnamed Party Gordon Huntington Harper (CRD Number 5460504) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Gordon Huntington Harper 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:

The Panel finds that Claimants' allegations of unsuitability and misrepresentation of information are false in that they are not supported by the evidence in the record or the testimony or evidence presented at the hearing. There is no indication that the investment complained of was unsuitable for Claimants in conjunction with their entire portfolio and risk tolerance level.

During the approximately 3-year period Claimants held their Harvest account, their portfolio generated a significant profit – net of any Harvest losses and of costs and expenses. The Harvest strategy was a suitable fit for Claimants' portfolio because it had the potential to generate a relatively high-level of income while allowing them to retain their principal – a desire repeatedly requested by Claimants. Claimants had been advised that the Harvest account volatility could be significant during market surges and elected a strategy of remaining in the Harvest account while awaiting its return to its basis value. There is no indication of misrepresentation in that the record, evidence, and testimony presented at the expungement hearing show that Harper's communications with Claimants regarding the risks and benefits of the Harvest investment were continuously transparent and complete. Additionally, Claimants had many years of experience investing in securities and trading options.

## **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

### **Late Pre-Hearing Cancellation Fees**

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

December 4, 2020, cancellation requested by parties = \$ 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 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 the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-Hearing Conference: March 23, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00  
Hearing: July 21, 2021 1 session

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Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Mary Elizabeth Skelnik	-	Public Arbitrator, Presiding Chairperson
Andrea U. Calve	-	Public Arbitrator
Demetria Charissee Howard	-	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**

***Mary Elizabeth Skelnik***

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Mary Elizabeth Skelnik  
Public Arbitrator, Presiding Chairperson

**07/28/2021**

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Signature Date

***Andrea U. Calve***

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Andrea U. Calve  
Public Arbitrator

**07/29/2021**

\_\_\_\_\_  
Signature Date

***Demetria Charissee Howard***

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Demetria Charissee Howard  
Public Arbitrator

**08/02/2021**

\_\_\_\_\_  
Signature Date

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August 02, 2021

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