

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Donna J. Wagner

Case Number: 19-03556

vs.

Respondents
Brokers International Financial Services, LLC
and Mark Christopher Perry

Hearing Site: Indianapolis, Indiana

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 Donna J. Wagner (“Claimant”): Mark E. Maddox, Esq. and Thomas K. Caldwell, Esq., Maddox Hargett & Caruso, P.C., Fishers, Indiana.

For Respondents Brokers International Financial Services, LLC (“BIFS”) and Mark Christopher Perry (“Perry”), hereinafter collectively referred to as “Respondents”: Connie M. Fickel, Esq., Lewis Brisbois Bisgaard & Smith LLP, Los Angeles, California and David M. Florence, Esq., Lewis Brisbois Bisgaard & Smith LLP, San Diego, California.

CASE INFORMATION

Statement of Claim filed on or about: December 2, 2019.
Claimant signed the Submission Agreement: November 24, 2019.

Statement of Answer filed on or about: February 11, 2020.
Respondents did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: fraud, negligence, breach of contract, breach of fiduciary duty and constructive fraud, violations of FINRA Conduct Rules, violations of FINRA and federal rules regarding anti-money laundering, negligent

supervision, conversion, violations of the Indiana Securities Act, and respondeat superior. The causes of action related to Claimant's allegation that, while a registered representative of BIFS, Perry was the President of an insurance brokerage firm ("Company"). Claimant further alleged that Respondents allowed an unnamed party to use the Company as a conduit to obtain funds from Claimant and convert those funds for his own personal use and that Perry, who was responsible for its operations oversight, appears to be complicit.

Unless specifically admitted 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. Actual damages in the amount of \$1,342,483.20, representing the net out-of-pocket losses of Claimant;
2. Alternatively, damages measuring how Claimant's assets would have performed had they been properly managed;
3. Pre- and post-judgment interest, as allowed by the Indiana Securities Act;
4. Treble damages, as allowed by statute;
5. Costs of arbitration, including FINRA filing fees, expert witness fees, reasonable attorneys' fees, arbitrator fees, and expenses pursuant to the Indiana Securities Act;
6. Punitive damages; and
7. Other relief.

In the Statement of Answer, Respondents requested that Claimant's claims be denied in their entirety and that the Panel assess all forum fees, attorneys' fees, and hearing session fees in connection with this arbitration proceeding against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondents did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code"). Respondents having answered the claim, BIFS having appeared at the hearing through a representative, and Perry having appeared in person and testified at the hearing, Respondents are bound by the determination of the Panel on all issues.

On April 30, 2020, Respondents filed a Motion to Dismiss to the Panel and Declarations in Support Thereof ("Motion to Dismiss"), pursuant to Rules 12200 and 12504 of the Code. On May 14, 2020, Claimant filed a Response in Opposition to the Motion to Dismiss. On June 12, 2020, Respondents filed a Reply in Support of the Motion to Dismiss. On June 18, 2020, Claimant filed a Surreply in Opposition to the Motion to Dismiss. On June 22, 2020, Respondents filed a Response to Surreply in Support of the Motion to Dismiss. On June 23, 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 November 3, 2020, Respondents requested that the Panel allow them to file a renewed motion to dismiss pursuant to Rule 12504(a)(8) (“Respondents’ Request”). On November 5, 2020, Claimant filed a Response to Respondents’ Request. On November 5, 2020, Respondents filed a Reply to the Response to Respondents’ Request. On December 3, 2020, the Panel heard oral arguments on Respondents’ Request. In an Order dated the same day, the Panel denied Respondents’ Request.

On April 9, 2021, Respondents filed a Motion for Directed Verdict and Sanctions (“Motion for Directed Verdict”). The Panel heard oral arguments on the Motion for Directed Verdict on the same day. In an Order dated April 11, 2021, the Panel granted leave to Claimant to file a response to the Motion for Directed Verdict. On April 13, 2021, Claimant filed a Response to the Motion for Directed Verdict. In an Order dated April 15, 2021, the Panel denied the Motion for Directed Verdict.

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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$795,929.00 in compensatory damages.
2. Respondents are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 8.00% per annum beginning 30 days after the issuance of this Award through and including the date this Award is paid in full.
3. Within 30 days after issuance of this Award, Claimant shall assign to Respondents the Agreed Judgment, in the amount of \$950,000.00, entered in favor of Claimant in the Hamilton Circuit Court, State of Indiana, County of Hamilton, Cause No 29C01-1912-PL-011273 and dated December 17, 2020.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, sanctions, 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	= \$ 2,000.00
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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, BIFS is assessed the following:

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

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	200.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
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The Panel has assessed the total discovery-related motion fees, jointly and severally, to Respondents.

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:

Four (4) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$	5,600.00
Pre-Hearing Conferences:		
March 31, 2020	1 session	
June 23, 2020	1 session	
October 27, 2020	1 session	
December 3, 2020	1 session	

Twelve (12) hearing sessions @ \$1,400.00/session	= \$	16,800.00
Hearings:		
April 6, 2021	2 sessions	
April 7, 2021	2 sessions	
April 8, 2021	2 sessions	
April 9, 2021	2 sessions	
May 3, 2021	2 sessions	
May 4, 2021	2 sessions	

Total Hearing Session Fees	= \$	22,400.00
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The Panel has assessed \$10,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$11,900.00 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

Lynn Hirschfeld Brahin	-	Public Arbitrator, Presiding Chairperson
Robert David Epstein	-	Public Arbitrator
Natalie R. Dickey	-	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

Lynn Hirschfeld Brahin

Lynn Hirschfeld Brahin
Public Arbitrator, Presiding Chairperson

05/17/2021

Signature Date

Robert David Epstein

Robert David Epstein
Public Arbitrator

05/17/2021

Signature Date

Dissenting Arbitrator's Signature

Natalie R Dickey

Natalie R. Dickey
Public Arbitrator

05/14/2021

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.

May 17, 2021

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