

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Mark Bastille and
Bettina Bastille

Case Number: 20-00058

vs.

Respondents

Primex, Curtis Smiley,
and Wilfredo Felix, Jr.

Hearing Site: Tampa, Florida

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 and Associated Persons

REPRESENTATION OF PARTIES

For Claimants Mark Bastille and Bettina Bastille (“Claimants”): Matthew E. Wolper, Esq., Wolper Law Firm, P.A., Plantation, Florida.

For Respondent Primex (“Primex”): Wilfredo Felix, CEO, Primex, New York, New York.

Respondent Curtis Smiley (“Smiley”) appeared pro se.

Respondent Wilfredo Felix, Jr. (“Felix”) appeared pro se.

CASE INFORMATION

Statement of Claim filed on or about: January 6, 2020.

Amended Statement of Claim filed on or about: June 12, 2020.

Claimants signed the Submission Agreement: January 6, 2020.

Statement of Answer filed by Primex and Smiley on or about: February 25, 2020.

Primex and Smiley signed the Submission Agreements: February 25, 2020.

Felix did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent misrepresentation; misrepresentation/omission;

negligent supervision, hiring, and retention; and breach of contract. The causes of action related to Claimants' allegation that there was a failure to conduct adequate due diligence before a recommendation was made to invest in Sandlapper Student Housing Delaware Statutory Trust ("Sandlapper"), a pooled real estate security.

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

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested an award of compensatory damages in an amount to be determined at trial but no less than \$400,000.00 or, in the alternative, rescission; interest; costs; any adverse tax consequences; any adverse consequences experienced by Claimants as a result of loans secured by Sandlapper; forum fees; and punitive damages.

In the Statement of Answer, Primex and Smiley requested that Claimants' Statement of Claim be denied and dismissed in its entirety, that Claimants be assessed all fees and costs incurred, expungement of all references to this arbitration from their registration records maintained by the Central Registration Depository ("CRD"), and all other relief as is deemed 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 12, 2020, Claimants filed a Motion for Leave to Amend Statement of Claim. No response was filed. In an Order dated June 25, 2020, the Panel granted the Motion for Leave to Amend Statement of Claim.

Felix did not file a Statement of Answer or a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having participated, is bound by the determination of the Panel on all issues submitted.

On February 17, 2021, Claimants filed a notice of dismissal without prejudice ("Dismissal"). On February 18, 2021, Smiley consented to the Dismissal. On February 19, 2021, Primex and Felix consented to the Dismissal. Accordingly, the Panel made no determination on any of Claimants' claims.

On February 19, 2021, FINRA provided notice to the parties that this case would be closed if a written request for expungement was not filed by March 8, 2021. Smiley did not pursue a request for expungement. Accordingly, the Panel made no determination on Primex's request for expungement on behalf of Smiley.

On March 8, 2021, Primex and Felix filed a Request for Expungement, to which no response was filed.

In an Order dated April 22, 2021 ("Order"), the Panel ordered Felix to confirm his agreement to the schedule selected for the hearing on his Request for Expungement, or provide alternative dates

and ruled that failure to comply would result in dismissal of the Request for Expungement. No response to the Order was filed. Herein, the Panel dismisses the Request for Expungement without prejudice.

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

AWARD

After considering the pleadings, Request for Expungement, and other submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The request for expungement, filed by Primex and Felix, of the above-captioned arbitration from registration records maintained by the CRD is dismissed without prejudice.

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
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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, Primex 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:

February 22, 2021, settled by parties	= \$ 300.00
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Total Late Pre-Hearing Cancellation Fees	= \$ 300.00
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The Panel has assessed \$150.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees jointly and severally to Primex, Smiley, and Felix.

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: April 21, 2020	1 session	
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Total Hearing Session Fees	= \$	1,125.00

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

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Primex, Smiley, and Felix.

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

ARBITRATION PANEL

John P. Cullem	-	Public Arbitrator, Presiding Chairperson
Kenneth R. Starr	-	Public Arbitrator
Brian Gregorius	-	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

John P. Cullem

John P. Cullem
Public Arbitrator, Presiding Chairperson

05/27/2021

Signature Date

Kenneth R. Starr

Kenneth R. Starr
Public Arbitrator

05/27/2021

Signature Date

Brian Gregorius

Brian Gregorius
Public Arbitrator

05/28/2021

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 28, 2021

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