

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Gerellen R. Joneson

Case Number: 20-00193

vs.

Respondents

Cetera Advisors LLC
First Allied Securities, Inc.
Mark Alan Haenny
Matthew David Hickey

Hearing Site: Denver, Colorado

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 Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Gerellen R. Joneson (“Claimant”): James N. Thomaidis, Esq., Gersh & Thomaidis, LLC, Denver, Colorado.*

For Respondents Cetera Advisors LLC (“Cetera”), First Allied Securities, Inc. (“First Allied”), Mark Alan Haenny (“Haenny”), and Matthew David Hickey (“Hickey”): Derek C. Anderson, Esq., Winget Spadafora & Schwartzberg, LLP, Boulder, Colorado.

Hereinafter, Cetera, First Allied, Haenny and Hickey are collectively referred to as “Respondents”.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: January 17, 2020.

Claimant signed the Submission Agreement: January 17, 2020.

Statement of Answer filed on or about: April 7, 2020.

Cetera and First Allied signed the Submission Agreements: March 17, 2020.

Haenny and Hickey signed the Submission Agreements: April 7, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty and negligence; violation of the Colorado Securities Act (“CSA”) and the Investment Advisers Act of 1940; violation of Colorado insurance law; failure to supervise/control person liability; and aiding and abetting violation of CSA. The causes of action relate to investments in various securities, including Sun Life Financial Masters Annuity, Lincoln Financial Annuity, and real estate investment trusts (“REITs”), and in limited partnerships within Claimant’s accounts.

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. Compensatory damages, in an amount to be proven at a final hearing;
2. Pre-judgment and post-judgment statutory interest;
3. Attorneys’ fees and costs as provided under any applicable law; and
4. Such other relief as the Panel deems just and equitable.

In the Statement of Answer, Respondents requested:

1. The Statement of Claim be dismissed in its entirety with prejudice;
2. All reasonable costs and expenses, including reasonable attorneys’ fees;
3. Forum fees; and
4. Such further relief as the Panel may deem just and proper.

Haenny and Hickey each filed a request for expungement of all references to this matter from Central Registration Depository (“CRD”) registration records. 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 December 14, 2020, Claimant withdrew the claim against Cetera without prejudice. On December 21, 2020 Claimant withdrew the claim against Hickey with prejudice.

On January 24, 2021, Claimant filed a notice of settlement with First Allied and Haenny and dismissal of this arbitration, in its entirety, with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On February 10, 2021, Haenny and Hickey filed a Motion for Expungement, to which no response

was filed.

The Panel conducted a recorded hearing by videoconference on May 26, 2021, so the parties could present oral argument and evidence on Haenny and Hickey's requests for expungement.

Claimant did not participate in the expungement hearing.

The Panel reviewed Haenny and Hickey's BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel also reviewed the settlement documentation and noted that Claimant's claim against Hickey was withdrawn before the settlement.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings; Haenny's testimony; Hickey's testimony; and stipulation dated December 21, 2020 dismissing Hickey without settlement or contribution.

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. Respondent Mark Alan Haenny's (CRD Number 4574656) request for expungement of the above-captioned arbitration (Occurrence Number 2064867) from his registration records maintained by the CRD is denied.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2065944) from registration records maintained by the CRD for Respondent Matthew David Hickey (CRD Number 1538384) with the understanding that, pursuant to Notice to Members 04-16, Respondent Matthew David Hickey 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:

The Panel reviewed all pleadings and submissions in the case file, as well as the testimony of Hickey in its decision and found Hickey was credible.

Hickey did not make any recommendations for sales or purchases in Claimant's account for the brief period of time he was the representative on the account.

The Panel reviewed the December 21, 2020 submission and stipulation that Hickey was dismissed from this action without entering into a settlement agreement with Claimant and did not contribute to the settlement reached with other parties by Claimant.

There is no evidence to find that expungement of this claim from Hickey's CRD records will pose a risk to the investing public.

3. Any and all claims for relief not specifically addressed herein, including any requests for attorneys' fees, are denied.

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 = \$ 1,575.00

**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 parties, First Allied and Cetera 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 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: May 13, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: May 26, 2021 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

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

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Haenny and Hickey.

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

ARBITRATION PANEL

Steven Meyrich	-	Public Arbitrator, Presiding Chairperson
Steven M. Feder	-	Public Arbitrator
Mary C. Davis	-	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

Steven Meyrich

Steven Meyrich
Public Arbitrator, Presiding Chairperson

06/11/2021

Signature Date

Steven M. Feder

Steven M. Feder
Public Arbitrator

06/14/2021

Signature Date

Mary C. Davis

Mary C. Davis
Public Arbitrator

06/14/2021

Signature Date

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June 14, 2021

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