

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

John A. Kirchner and
Patricia R. Kirchner,
Individually and as JTWROS

Case Number: 20-00221

vs.

Respondents

Capital Financial Services, Inc.,
Calton & Associates, Inc.,
Steven Knuttila, John R. Carlson,
Donald P. Waage, Cheryl Romann,
Bart J. Bohrer, Chad A. Thuner,
Nicole J. Bertsch, and
Joanne M. Christianson

Hearing Site: Minneapolis, Minnesota

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. Members and Associated Persons

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants John A. Kirchner and Patricia R. Kirchner, Individually and as JTWROS (“Claimants”): Bradford M. Gucciardo, Esq., Gucciardo Law Group, PA, Lakewood Ranch, Florida.*

For Respondents Capital Financial Services, Inc. (“Capital”) and Joanne M. Christianson (“Christianson”): Gordon Dihle, Esq., Corporate Legal, LLC, Centennial, Colorado.

For Respondent Calton & Associates, Inc. (“Calton”): Rolf E. Sonnesyn, Esq., Tomsche, Sonnesyn, and Tomsche, P.A., Minneapolis, Minnesota.

Respondent Steven Knuttila (“Knuttila”) appeared pro se.

For Respondent John R. Carlson (“Carlson”): Gara M. Seagraves, Esq., Kaufman Dolowich & Voluck, LLP, Chicago, Illinois.

Respondent Donald P. Waage (“Waage”) did not appear.

Respondent Cheryl Romann (“Romann”) appeared pro se.

For Respondents Bart J. Bohrer (“Bohrer”), Chad A. Thuner (“Thuner”), and Nicole J. Bertsch (“Bertsch”): Lawton R. Graves, Esq., Murphy Anderson, Jacksonville, Florida.

*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: January 23 2020.
Answer to Calton’s Counterclaim filed on or about: June 19, 2020.
Claimants signed the Submission Agreement: January 23, 2020.

Statement of Answer filed by Capital on or about: March 12, 2020.
Capital signed the Submission Agreement: April 8, 2020.

Statement of Answer and Counterclaim filed by Calton on or about: May 7, 2020.
Calton signed the Submission Agreement: May 7, 2020.

Statement of Answer filed by Knutilla on or about: March 30, 2020.
Knutilla signed the Submission Agreement: April 21, 2020.

Statement of Answer filed by Carlson on or about: March 11, 2020.
Carlson signed the Submission Agreement: March 11, 2020.

Waage did not submit a Statement of Answer and did not sign the Submission Agreement.

Statement of Answer filed by Romann on or about: March 16, 2020.
Amended Statement of Answer filed by Romann on or about: April 10, 2020.
Romann signed the Submission Agreement: March 23, 2020.

Statement of Answer filed by Bohrer, Thuner and Bertsch on or about: March 13, 2020.
Bohrer, Thuner, and Bertsch signed the Submission Agreements: March 13, 2020.

Statement of Answer filed by Christianson on or about: March 12, 2020.
Christianson signed the Submission Agreement: April 8, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violations of federal and state securities laws, violation of Minnesota Prevention of Consumer Fraud Act, violation of Minnesota Act Preventing Deceptive Acts Against Senior Citizens, common law fraud, breach of fiduciary duty, negligence/negligent hiring/negligent supervision, and breach of contract. The causes of action related to Claimants’ allegations that Capital, through Knutilla, intentionally selected and recommended unsuitable high commission paying products, including

high risk, illiquid, private placements and real estate investment trusts (“REITS”) to Claimants, including the Coachman Energy Bakken Drilling Fund III, LP, Coachman Energy Bakken Income Fund, LLC, and Genesis Drilling Program I, LP.

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

Unless specifically admitted in the Statement of Answer and Counterclaim, Calton denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and alleged that the Statement of Claim was filed in bad faith.

Unless specifically admitted in the Answer to Calton’s Counterclaim, Claimants denied the allegations made in the Counterclaim.

Unless specifically admitted in the Statement of Answer, Knutilla denied the allegations made in the Statement of Claim.

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

Unless specifically admitted in the Statement of Answer, as amended, Romann denied the allegations made in the Statement of Claim.

Unless specifically admitted in the Statement of Answer, Bohrer, Thuner, and Bertsch denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Christianson 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 of at least \$200,000.00; punitive damages of an undetermined amount; pre-award and post-award interest; all costs and fees incurred in this action, including forum fees, expert witness fees, and any additional costs and fees incurred; attorneys’ fees; and such further relief as the Panel deems just and appropriate.

In the Statement of Answer, Capital requested that the Statement of Claim be denied in its entirety and that all costs of the arbitration including filing fees, hearing costs, arbitrator fees, attorneys’ fees, and costs be assessed against Claimants.

In the Statement of Answer and Counterclaim, Calton requested that the Statement of Claim be denied in its entirety and that all costs of the arbitration, including filing fees, hearing costs, arbitrator fees, attorneys’ fees, and costs of defense, be assessed against Claimants.

In the Answer to Calton’s Counterclaim, Claimants requested that the Counterclaim be denied.

In the Statement of Answer, Knutilla did not request any relief.

In the Statement of Answer, Carlson requested that the Statement of Claim and all relief requested therein be denied and dismissed in its entirety; that the Panel recommend expungement of all references to Claimants and this matter from registration records maintained by the Central Registration Depository ("CRD"); that Claimants be assessed with all costs and fees incurred herein; and such further relief as is just, proper, and lawful.

In the Statement of Answer, as amended, Romann requested expungement of all references to this matter from registration records maintained by the CRD.

In the Statement of Answer, Bohrer, Thuner, and Bertsch requested that the Panel deny the Statement of Claim, expunge Claimants' claims and this arbitration from registration records maintained by the CRD, and grant such other and further relief as may be just and proper.

In the Statement of Answer, Christianson requested that the Panel deny the Statement of Claim, expunge all references to this matter from registration records maintained by the CRD; and grant such other and further relief as may be 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.

Waage did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code").

On April 28, 2020, Thuner, Bertsch, and Bohrer filed a Motion to Dismiss ("1st Motion to Dismiss") pursuant to Rule 12504 of the Code. On June 19, 2020, Claimants filed a Response to the 1st Motion to Dismiss. On July 1, 2020, Thuner, Bertsch, and Bohrer filed a Reply in Support of the 1st Motion to Dismiss.

On September 25, 2020, Carlson filed for bankruptcy under the United States Bankruptcy Code. In accordance with these filings, all claims against Carlson are indefinitely stayed. Accordingly, the Panel made no determination with respect to the claims against Carlson.

On October 1, 2020, Claimants filed a notice of withdrawal, with prejudice, of their claims against Thuner, Bohrer, and Bertsch. Accordingly, the 1st Motion to Dismiss became moot, and the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Thuner, Bohrer, and Bertsch.

On January 4, 2021, Calton filed a Motion to Dismiss ("2nd Motion to Dismiss") pursuant to Rule 12504 of the Code. On March 9, 2021, Claimants filed a Response to the 2nd Motion to Dismiss.

On May 26, 2021, Claimants filed a notice of dismissal, with prejudice, of their claims against Calton. Accordingly, the 2nd Motion to Dismiss became moot, and the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Calton.

On June 22, 2021, Claimants filed a notice of settlement with Capital and Christianson. Accordingly, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Capital and Christianson.

On June 25, 2021, Claimants filed a notice of withdrawal, with prejudice, of their claims against Romann and Knutilla. Accordingly, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Romann and Knutilla.

On June 28, 2021, Claimants filed a notice of withdrawal, with prejudice, of their claims against Waage. Accordingly, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Waage.

On July 10, 2021, Romann filed a Request for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on September 13, 2021, so the parties could present oral argument and evidence on Romann's request for expungement.

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

Carlson, Bohrer, Thuner, Bertsch, and Christianson did not pursue their requests for expungement. Accordingly, the Panel made no determination as to their requests for expungement.

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. Romann's request for expungement of the above-captioned arbitration (Occurrence Number 2060694) from registration records maintained by the CRD is denied.
2. 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	= \$	1,425.00
Counterclaim Filing Fee	= \$	1,700.00

**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, Capital and Calton are each assessed the following:

Member Surcharge	= \$	1,700.00
Member Process Fee	= \$	3,250.00

Late Pre-Hearing Cancellation Fees

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

October 12, 2020, cancellation requested by Thuner, Bohrer, and Bertsch	= \$	300.00
May 4, 2021, cancellation requested by Claimants and Calton	= \$	300.00

Total Late Pre-Hearing Cancellation Fees	= \$	600.00
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The Panel has assessed \$450.00 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 to Calton.

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: June 8, 2020	1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: September 13, 2021	1 session	

Total Hearing Session Fees	= \$	2,250.00
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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 Capital, Calton, Knuttila, Romann, Bohrer, Thuner, Bertsch, and Christianson.

The Panel has assessed \$1,125.00 of the hearing session fees to Romann.

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

ARBITRATION PANEL

Grant D. Sanders	-	Public Arbitrator, Presiding Chairperson
Jeffrey W. Jacobs	-	Public Arbitrator
John M. James	-	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

Grant D. Sanders

Grant D. Sanders
Public Arbitrator, Presiding Chairperson

10/12/2021

Signature Date

Jeffrey W. Jacobs

Jeffrey W. Jacobs
Public Arbitrator

10/11/2021

Signature Date

John M. James

John M. James
Public Arbitrator

10/11/2021

Signature Date

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October 12, 2021

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