

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Louis Wendruck

Case Number: 20-00242

vs.

Respondents
Gamble Jones Investment Counsel
Robert Souza

Hearing Site: Los Angeles, California

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. Non-Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Louis Wendruck (“Claimant”): Marc I. Zussman, Esq., Law Offices of Marc I. Zussman, Los Angeles, California.

For Respondents Gamble Jones Investment Counsel (“Gamble Jones”) and Robert Souza (“Souza”): Robert B. Ericson, Esq., Albert & Will, LLP, Torrance, California.

Hereinafter, Gamble Jones and Souza are collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2020.
Claimant signed the Submission Agreement: March 3, 2020.

Statement of Answer filed by Respondents on or about: May 21, 2020.
Respondents signed the Submission Agreement: March 20, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; fraud; and negligent misrepresentation. Claimant asserted the following additional causes of action against Gamble Jones: breach of contract; breach of implied covenant of good faith and fair dealing; and violation of unfair competition law and California Business & Professions

Code Section 17200. The causes of action relate to Claimant's investments in Valeant Pharmaceuticals and Endo International stocks using Gamble Jones' Focused Equity Strategy.

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 based on "net out of pocket" damages in an amount according to proof, but not less than \$417,784.00, or in the alternative, compensatory damages based on "well managed" portfolio damages in an amount according to proof, but not less than \$484,452.00;
2. Disgorgement of fees, commissions and other remuneration paid to Respondents;
3. Punitive damages;
4. Attorneys' fees;
5. Costs;
6. Pre and post-award interest and the legal rate; and
7. Such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondents requested:

1. All claims in the Statement of Claim be dismissed in their entirety against Respondents with prejudice;
2. Costs;
3. Attorneys' fees; and
4. Such other and further relief as the Panel deems just and equitable.

At the hearing, Claimant requested:

1. Compensatory damages in the amount of \$417,784.00 based on "net out of pocket" losses;
2. Interest at 10% annum for six years;
3. Expert costs in the amount of \$27,000.00;
4. Punitive damages in the amount of \$417,784.00; and
5. That forum fees be assessed equally between Claimant and Respondents.

At the hearing, Respondents requested:

1. Dismissal of all claims with prejudice;
2. Statement in this Award that the claims lacked any basis-in-fact;
3. All forum fees be assessed against Claimant; and
4. Attorneys' fees in the amount of \$100,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

Gamble Jones is an Investment Adviser firm and Souza is an Investment Adviser. Respondents are not members or associated persons of FINRA. Respondents voluntarily submitted the present matter in controversy to arbitration in accordance with the FINRA By-Laws, Rules, and Code of Arbitration Procedure (“Code”) by filing an executed post-dispute submission agreement for cases involving Investment Advisers who are not FINRA-regulated firms. Respondents are bound by the determination of the Panel on all issues submitted.

On October 22, 2021, at the conclusion of Claimant’s Case-In-Chief, Respondents made a Motion to Dismiss orally pursuant to Rule 12504 of the Code on the basis that Claimant failed to prove any breach of duties owed to him and any basis for damages which Claimant then opposed. Pursuant to the Panel’s Order, Respondents then filed this same Motion to Dismiss in writing on October 27, 2021, Claimant filed his Opposition thereto on November 5, 2021, and Respondents filed their Reply on November 8, 2021. The Panel denied the Motion to Dismiss on November 10, 2021.

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 \$208,892.00 in compensatory damages.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive 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

**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. The parties’ executed post-dispute submission agreement provided that non-member Gamble Jones is assessed the following:

Member Surcharge = \$ 1,900.00
Member Process Fee = \$ 3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

May 3-7, 10-11, 2021 postponement requested by Parties	Waived
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Total Postponement Fees	Waived

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

Two (2) decisions on contested motions for the issuance of a subpoena with one Arbitrator @ \$200.00 = \$ 400.00

Total Contested Motion for Issuance of Subpoena Fees = \$ 400.00

The Panel has assessed \$200.00 of the contested motion for issuance of subpoena fees to Claimant.

The Panel has assessed \$200.00 of the contested motion for issuance of subpoena 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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00
Pre-Hearing Conference: June 14, 2021 1 session

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: July 17, 2020 1 session

Sixteen (16) hearing sessions @ \$1,125.00/session = \$ 18,000.00
Hearings: October 18, 2021 2 sessions
October 19, 2021 2 sessions
October 20, 2021 2 sessions
October 21, 2021 2 sessions
October 22, 2021 2 sessions
November 15, 2021 2 sessions
November 16, 2021 2 sessions
November 17, 2021 2 sessions

Total Hearing Session Fees = \$ 19,575.00

The Panel has assessed \$9,787.50 of the hearing session fees to Claimant.

The Panel has assessed \$9,787.50 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

Constance Ellen Boukidis	-	Public Arbitrator, Presiding Chairperson
Andrew Levy	-	Public Arbitrator
Alma Rene Holland	-	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

Constance Ellen Boukidis

Constance Ellen Boukidis
Public Arbitrator, Presiding Chairperson

12/17/2021

Signature Date

Andrew Levy

Andrew Levy
Public Arbitrator

12/14/2021

Signature Date

Alma Rene Holland

Alma Rene Holland
Public Arbitrator

12/14/2021

Signature Date

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December 17, 2021

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