

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

John Stephen Miller

Case Number: 20-00402

vs.

Respondents

Eric Steven Burnette

Shelley Long Eddy

David Harrison Miller

Peachcap Securities, Inc.

Hearing Site: Orlando, 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: Customer vs. Member and Associated Persons

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

REPRESENTATION OF PARTIES

Claimant John Stephen Miller appeared pro se.

For Respondents Eric Steven Burnette (“Burnette”), Shelley Long Eddy (“Eddy”), David Harrison Miller (“DHM”) and Peachcap Securities, Inc. (“Peachcap”): Gregg J. Breitbart, Esq. and Craig Glasser, Esq., Kaufman Dolowich & Voluck, LLP, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 24, 2020.

John Stephen Miller signed the Submission Agreement: January 24, 2020.

Statement of Answer filed by Respondents Eddy, DHM and Peachcap on or about: March 26, 2020.

Respondent Peachcap Securities, Inc. signed the Submission Agreement: March 24, 2020.

Respondent DHM signed the Submission Agreement: February 22, 2021.

Respondent Eddy signed the Submission Agreement: February 23, 2021.

Reply to Statement of Answer filed by Claimant on or about: July 27, 2020.

Amended Statement of Claim filed on or about: August 5, 2020.

John Stephen Miller signed the Amended Submission Agreement: July 8, 2020.

Notice of Adoption of Previously Filed Answer and Defenses in Response to Amended Statement of Claim (“Notice of Adoption”) filed by Respondents Eddy, DHM, Peachcap and Burnette on or about: September 25, 2020.

Respondent Burnette signed Submission Agreement: February 22, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; unauthorized trading; material misrepresentation and omissions; unsuitability; and failure to diversify. The causes of action relate to Claimant’s assertion that Respondents mismanaged his accounts by leaving too much uninvested cash in them, and purchasing unsuitable stocks and bonds with the rest, including Pro Shares Ultra VIX Short Term ETF and Barclay Bank PLC Preferred Stock.

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

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested compensatory damages in the combined amount of \$21,584.49, comprised of investment management fees, platform fees, commissions/ticket charges, and actual losses. Claimant further requested reimbursement of his claim filing fee in the amount of \$425.00.

In their Statement of Answer to the Statement of Claim, as amended, Respondents requested dismissal of all claims in their entirety and expungement of all references to this matter from Respondents Eddy and DHM’s respective Central Registration Depository (“CRD”) records.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On or about July 15, 2020, Claimant filed a Motion to Amend the Statement of Claim for the sole purpose of adding Eric Steven Burnette as a respondent in this matter. On or about July 27, 2020, Eric Steven Burnette and Respondents Eddy, DHM and Peachcap jointly filed an opposition to the Motion. On or about August 6, 2020, the Arbitrator issued an Order that granted the Motion.

The Arbitrator conducted a recorded, telephonic hearing on February 23, 2021, so the parties could present oral argument and evidence on Respondents Eddy and DHM’s requests for expungement.

Claimant participated in the expungement hearing and stated that Respondents Eddy and DHM were involved with his accounts.

The Arbitrator reviewed Respondents Eddy and DHM’s BrokerCheck® Reports. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator noted that this dispute was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim, Respondents' Statement of Answer, Respondents' Brief and Respondents' submissions, Respondents' brief in Support of Request for Expungement, Claimant's submissions and all pleadings submitted through the FINRA DR Portal, all of which outlined the facts of the case; BrokerCheck® Reports for Respondents Eddy and DHM; and the testimony of Claimant and Respondents Eddy and DHM during the expungement hearing.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

AWARD

After considering the pleadings, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant alleged in his Statement of Claim that Respondents breached their fiduciary duty to Claimant and were negligent by failing to inquire of Claimant as to his investment objectives and goals, failing to communicate with him, and trading without authorization or notice to him. However, the evidence submitted by Respondents showed that Claimant was asked, and communicated, his risk tolerance and investment objectives several times to Respondents, including their associates. Claimant did not refute the evidence that Respondents had authority to make discretionary trades without notice to him. Claimant did not refute the documentation submitted by Respondents that Claimant was aware of the fees charged by Respondent Peachcap. Although the Arbitrator believes that Respondents had a duty to return calls and communicate with Claimant, there is evidence that Claimant continued to communicate with associates of Respondents and insufficient documentation was submitted that Claimant voiced complaints to Respondents about their failure to return his calls and answer questions.

Further, Claimant alleged in his Statement of Claim that Respondents failed to manage his accounts and failed to diversify and make suitable investments. However, the account and trade documents submitted show a range of stocks from "blue chip" companies purchased in several investment sectors. Although the Pro Shares Ultra VIX was a risky investment, Respondent provided reasons that this trade was made; namely, to guard against a possible move in the markets, which, had that occurred, would have provided some protection against losses due to the market movement. Based on the foregoing, Claimant's claims are denied in their entirety.

2. Any and all claims for relief not specifically addressed herein are denied.
3. FINRA Dispute Resolution Services shall retain the \$425.00 filing fee that Claimant deposited previously.
4. Respondents Burnette, Eddy, DHM and Peachcap are jointly and severally liable for and shall pay to Claimant \$212.50 to reimburse Claimant for one-half of the filing fee previously paid to FINRA Dispute Resolution Services.

5. The Arbitrator recommends the expungement of all references to the above-captioned arbitration from registration records maintained by the CRD for Respondents Shelley Long Eddy (CRD Number 4862159)(Occurrence Number 2064260) and David Harrison Miller (CRD Number 4648882)(Occurrence Number 2064262) with the understanding that, pursuant to Notice to Members 04-16, Respondents Shelley Long Eddy and David Harrison Miller 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, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Arbitrator has made the above Rule 2080 finding based on the following reasons:

Neither Respondent Eddy nor Respondent DHM had any contact whatsoever with Claimant. Specifically, neither of them:

- had ever met, or spoken to Claimant;
- provided Claimant with any financial analysis or advice;
- performed as Claimant's financial advisor;
- made any trades in Claimant's accounts;
- were responsible for Claimant's accounts;
- attended any telephonic or in-person meeting in which Claimant was present;
- received any compensation from Claimant or from his trades; or
- had any relationship with Claimant.

Therefore, the Arbitrator recommends expungement of this matter from Respondents' Eddy and DHM's CRD records.

FEES

Pursuant to the Code:

1. Respondent Peachcap has paid to FINRA Dispute Resolution Services the \$450.00 Member Surcharge previously invoiced.
2. The Arbitrator has assessed the \$450.00 expungement hearing session fee jointly and severally to Respondents Eddy and DHM.

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

ARBITRATOR

Gerald Thomas Harper

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Sole 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.

Arbitrator's Signature

Gerald Thomas Harper

Gerald Thomas Harper
Sole Public Arbitrator

03/02/2021

Signature Date

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March 02, 2021

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