

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Michael Del Ninno as Trustee for the  
Michael Del Ninno IRA n/k/a  
the Nicholas M. Del Ninno IRA

Case Number: 20-00599

vs.

Respondents

Robert W. Baird & Co., Incorporated  
f/k/a J.J.B. Hilliard, W.L. Lyons, LLC  
d/b/a Hilliard Lyons,  
and Randal J. Master

Hearing Site: Orlando, Florida

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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 Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Michael Del Ninno as Trustee for the Michael Del Ninno IRA n/k/a the Nicholas M. Del Ninno IRA (“Claimant”): Andrew M. Greenidge, Esq., Epperson & Greenidge, P.A., Media, Pennsylvania.\*

For Respondents Robert W. Baird & Co., Incorporated (“Baird”) f/k/a J.J.B. Hilliard, W.L. Lyons, LLC d/b/a Hilliard Lyons (“J.J.B.”), and Randal J. Master (“Master”), and (collectively, “Respondents”): Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

\*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: February 20, 2020.

Claimant signed the Submission Agreement: February 20, 2020.

Statement of Answer filed on or about: May 11, 2020.

Respondents signed the Submission Agreements: May 11, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: violations of FINRA Rules 2090, 2111, and 3110; respondeat superior; failure to supervise; negligence; breach of fiduciary duty; breach of contract; and breach of the duty of good faith and fair dealing. The causes of action relate to Claimant's allegations that Master recommended, and over-concentrated, Claimant's money into CBL & Associates Property, Inc., a high-risk and unsuitable investment that was not in-line with his investment objectives and risk tolerance.

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 the following judgment against the Respondents:

- a. Compensatory damages in favor of Claimant for all damages sustained as a result of Respondents' wrongdoing for an amount determined at final hearing, but not less than \$133,000.00, as well as lost profits based on the well-managed portfolio theory and interest, where applicable;
- b. Interest to run until the date that the award is paid and satisfied by Respondents;
- c. Disgorgement of fees, commissions, and compensation earned from Claimant's investments;
- d. All expenses and costs, including experts' fees;
- e. Rescission or a recessionary measure of damages;
- f. Prejudgment interest; and
- g. Such additional equitable/injunctive or other relief as deemed appropriate by the Panel.

In the Statement of Answer, Respondents requested that the Panel dismiss the Statement of Claim in its entirety with prejudice; assess all forum costs against Claimant; recommend expungement of this claim from Master's Central Registration Depository ("CRD") registration records; and grant Respondents such other and further relief as the Panel deems just and appropriate.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On September 24, 2021, Claimant filed a notice of voluntary dismissal with prejudice and settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim. The same day, Respondents filed a request that this matter remain open so the Panel could consider Master's request for expungement.

On October 11, 2021, Master filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on February 16, 2022, so the parties could present oral argument and evidence on Master's request for expungement.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Panel reviewed Master's BrokerCheck® Report. 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, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement, and the settlement was paid by Master's E&O insurance and Master contributed the deductible.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Master's testimony and Exhibits 2-13.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Numbers 1995517 and 2063614) from registration records maintained by the CRD for Respondent Randal J. Master (CRD Number 4406924) with the understanding that, pursuant to Notice to Members 04-16, Respondent Randal J. Master 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 preponderance of the evidence shows that the trades at issue in this arbitration were unsolicited and made against the recommendation of the registered representative. Accordingly, the Panel finds the claim, allegation, or information asserted by the Customer to be clearly erroneous.

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

*\*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, Baird is assessed the following:

Member Surcharge = \$ 1,700.00

Member Process Fee = \$ 3,250.00

#### **Postponement Fees**

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

September 28-October 1, 2021, postponement requested by parties WAIVED

#### **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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00

Pre-Hearing Conferences: June 10, 2020 1 session

March 30, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00

Hearing: February 16, 2022 1 session

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Total Hearing Session Fees = \$ 3,375.00

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

The Panel has assessed \$1,687.50 of the hearing session fees jointly and severally to Baird and Master.

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

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

**ARBITRATION PANEL**

David M. Snyder	-	Public Arbitrator, Presiding Chairperson
Shameeka E. Quallo	-	Public Arbitrator
Dwayne Eddie Hickman, Sr.	-	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**

***David M. Snyder***

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David M. Snyder  
Public Arbitrator, Presiding Chairperson

***02/25/2022***

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Signature Date

***Shameeka E. Quallo***

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Shameeka E. Quallo  
Public Arbitrator

***02/25/2022***

\_\_\_\_\_  
Signature Date

***Dwayne Eddie Hickman, Sr.***

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Dwayne Eddie Hickman, Sr.  
Public Arbitrator

***02/24/2022***

\_\_\_\_\_  
Signature Date

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February 25, 2022

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