

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

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In the Matter of the Arbitration Between:

Claimant  
James H. Rader, Jr.

Case Number: 20-00604

vs.

Respondent  
Capital Financial Services, Inc.

Hearing Site: Atlanta, Georgia

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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. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant James H. Rader, Jr. (“Claimant”): Kalju Nekvasil, Esq., Goodman & Nekvasil, P.A., St. Petersburg, Florida.

Respondent Capital Financial Services, Inc. (“Respondent”) was represented by Gordon Dihle, Esq., Corporate Legal, LLC until on or about October 5, 2021, after which time it was not represented.

**CASE INFORMATION**

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

Claimant signed the Submission Agreement: February 17, 2020.

Statement of Answer filed on or about: May 14, 2020.

Respondent signed the Submission Agreement: April 8, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: violations of federal securities laws, violation of the Georgia Securities Act, breach of contract, breach of fiduciary duty, common law fraud, and negligence and gross negligence. The causes of action related to allegations that Respondent, through its agent, recommended that Claimant invest in GPB Holdings II, LP and Shopoff Commercial Growth and Income Fund III, LP, private placement offerings which were high-risk, illiquid investments and unsuitable for Claimant.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested damages of at least \$100,001.00 and rescission, benefit of the bargain damages, lost opportunity costs, model portfolio damages, prejudgment interest, costs, reasonable attorneys' fees, punitive damages and such other relief as is deemed necessary and proper.

In the Statement of Answer, Respondent requested that Claimant's Statement of Claim be denied in its entirety and that all costs of the arbitration, including filing fees, hearing costs, arbitrator fees, and Respondent's attorneys' fees and costs of defense, be assessed against Claimant.

At the hearing, Claimant requested \$120,354.47 in compensatory damages, \$3,341.93 in hearing costs, \$42,124.06 attorneys' fees, punitive damages, and that all FINRA administration/forum fees be assessed against Respondent.

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

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

On March 4, 2021, Claimant filed an Emergency Motion for Sanctions ("Motion for Sanctions"). On March 14, 2021, Respondent filed a Response to the Motion for Sanctions. On March 19, 2021, Claimant filed a Reply in Support of Motion for Sanctions ("Reply"). On March 26, 2021, Claimant filed exhibits to the Reply. On March 26, 2021, the Panel heard oral arguments on the Motion for Sanctions. In an Order dated March 29, 2021, the Panel held its decision on the Motion for Sanctions in abeyance and the Panel denies the Motion for Sanctions herein.

Respondent did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Respondent received due notice of the hearing and that arbitration of the matter would proceed without Respondent present, in accordance with the Code of Arbitration Procedure ("Code").

The Panel 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.

Claimant retired and was required to remove his retirement funds from his employer's custodianship. He had no previous investment experience. Seeking preservation of capital and a modest return, he placed those and other funds with Respondent's agent ("Broker"), who put some of them into two private placements for which Claimant clearly was financially unqualified, based on the accurate assets and income information he provided to Broker. One security is now worthless and the other cannot be sold through any securities firm. Respondent is out of business and, after a long series of motions on various issues, including Respondent's lack of full response to discovery obligations, its counsel withdrew just before the hearing and Respondent did not appear to contest the claims. The hearing proceeded pursuant to Rule 12603 of the Code. Based on the sworn

testimony and other evidence presented at the hearing, and after review of the full record, the Panel finds that these securities were unsuitable for Claimant and were illegally sold to him, constituting a major infraction of FINRA Rule 2111 on suitability. Further, the Panel finds that Respondent failed to have procedures in place to prevent such flagrant violations of the securities laws and rules, acted with reckless disregard for its client's interests, and caused Claimant unnecessary trouble and expense. Further, the Panel finds clear and convincing evidence of willful misconduct by Respondent and conscious indifference to the consequences of its actions.

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 is liable for and shall pay to Claimant the sum of \$88,760.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$88,760.00 in punitive damages pursuant to O.C.G.A. §51-12-5.1.
3. Respondent is liable for and shall pay to Claimant the sum of \$14,668.00 in attorneys' fees pursuant to O.C.G.A. §10-5-58(b).
4. Respondent is liable for and shall pay to Claimant the sum of \$1,916.13 in costs.
5. Respondent is liable for and shall pay to Claimant the sum of \$300.00 to reimburse Claimant for the non-refundable portion of filing fee previously paid to FINRA Dispute Resolution Services.
6. Any and all claims for relief not specifically addressed herein, including any requests for treble damages 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
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*\*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, Respondent is assessed the following:

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

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Three (3) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	600.00
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Claimant submitted three (3) discovery-related motions

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Total Discovery-Related Motion Fees	= \$	600.00
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The Panel has assessed \$200.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$400.00 of the discovery-related motion fees to Respondent.

**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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: June 17, 2020	1 session	
March 8, 2021	1 session	
March 26, 2021	1 session	

One (1) hearing session @ \$1,125.00/session	= \$	1,125.00
Hearing: October 18, 2021	1 session	

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Total Hearing Session Fees	= \$	4,500.00
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The Panel has assessed the total hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Robert H. Putnam, Jr.	-	Public Arbitrator, Presiding Chairperson
Yaminah Childress	-	Public Arbitrator
Jeffrey Kimar Coleman	-	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**

***Robert H. Putnam, Jr.***

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Robert H. Putnam, Jr.  
Public Arbitrator, Presiding Chairperson

**10/30/2021**

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

***Yaminah Childress***

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Yaminah Childress  
Public Arbitrator

**10/29/2021**

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

***Jeffrey Kimar Coleman***

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Jeffrey Kimar Coleman  
Public Arbitrator

**11/01/2021**

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

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November 01, 2021

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