

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

James W. Miller, Jr.

Case Number: 20-00652

vs.

Respondents

Fidelity Brokerage Services LLC,
National Financial Services LLC,
Nicholas William King,
Paolo Diego Rocca, and
Strategic Advisers, Inc.

Hearing Site: Chicago, Illinois

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, Associated Persons, and Non-Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant James W. Miller, Jr. (“Claimant”): Stephen O’Donnell, Esq., McCullough, P.C., Chicago, Illinois.*

For Respondents Fidelity Brokerage Services LLC (“Fidelity”), National Financial Services LLC (“NFS”), Paolo Diego Rocca (“Rocca”), and Strategic Advisers, Inc. (“SAI”), hereinafter, collectively referred to as “Fidelity Respondents”: Joshua D. Jones, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama, and Kathryn Burfitt Rockwood, Esq., Bressler, Amery & Ross, P.C., Florham Park, New Jersey.

For Respondent Nicholas William King (“King”): Doctor Kennedy, Esq., AdvisorLaw LLC, Westminster, Colorado.

Fidelity, NFS, Rocca, SAI, and King, hereinafter, collectively referred to as “Respondents.”

*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 26, 2020.
Answer to King's Counterclaim filed on or about: May 20, 2020.
Claimant signed the Submission Agreement: February 25, 2020.

Statement of Answer filed by Fidelity Respondents on or about: June 23, 2020.
Fidelity, NFS, and Rocca signed the Submission Agreements: June 23, 2020.
SAI signed the Submission Agreement: July 20, 2020.

Statement of Answer and Counterclaim filed by King on or about: April 24, 2020.
King signed the Submission Agreement: April 21, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: fraud, breach of fiduciary duty, conversion, breach of contract, unjust enrichment, and negligent misrepresentation. Claimant alleged that the causes of action are based on the unauthorized sale and purchase of securities investments transferred by the James W. Miller, Jr. Trust to two securities accounts maintained with Fidelity, managed by SAI, and held in custody by NFS.

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

Unless specifically admitted in the Statement of Answer, King denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In King's Counterclaim, King asserted the following cause of action: abuse of process. The cause of action related to King's allegation that Claimant's Statement of Claim is completely frivolous, fabricated and an abuse of the FINRA arbitral process.

Unless specifically admitted in the Answer to King's Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award for all compensatory damages, disgorgement of any profit or gain Respondents received related to the accounts and transactions, punitive damages in an appropriate amount to deter the Respondents from engaging in similar conduct in the future, attorneys' fees, costs, and such other and further relief as the Panel deems just and appropriate.

In the Statement of Answer, Fidelity Respondents requested that the relief requested in the Statement of Claim be denied in all respects and expungement of all references to this matter from Rocca's Central Registration Depository ("CRD") registration records.

In the Statement of Answer, King requested that the Statement of Claim be dismissed with prejudice, and that Claimant take nothing there from; compensatory damages on his Counterclaim at an amount to be proven at the arbitration hearing, including but not limited to

attorneys' fees and costs as well as forum costs; expungement of all references to this matter from his CRD registration records; and any other relief that the Panel finds just and equitable.

In the Answer to King's Counterclaim, Claimant requested that King's Counterclaim be denied in its entirety and that he be awarded his attorneys' fees and costs incurred in responding to and defending against the legally and factually deficient Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 20, 2021, Claimant filed a notice of voluntary settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On June 28, 2021, King filed a notice dismissing the Counterclaim and requesting leave to keep the case open for expungement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Counterclaim.

On August 5, 2021, Rocca filed a Motion for Expungement. On August 25, 2021, Claimant filed a Response to the Motion for Expungement, not opposing Rocca's Motion for Expungement.

On August 10, 2021, King filed a Motion for Expungement. On August 20, 2021, Claimant filed an Opposition to King's Motion for Expungement. On August 25, 2021, King filed a Reply in Support of His Motion for Expungement. On February 2, 2022, King filed notice that he was withdrawing his request for expungement. Therefore, the Panel made no determination with respect to King's request for expungement.

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

Claimant and his counsel participated in the expungement hearing and did not oppose Rocca's expungement request.

The Panel reviewed Rocca's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence 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 that Rocca did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Rocca's testimony, Claimant's testimony, Rocca's Motion for Expungement, Claimant's Response to Rocca's Motion for Expungement, and Rocca's hearing exhibits.

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 Number 2067610) from registration records maintained by the CRD for Respondent Paolo Diego Rocca (CRD Number 2326803) with the understanding that, pursuant to Notice to Members 04-16, Respondent Paolo Diego Rocca 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 registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Evidence was presented at the expungement hearing that causes the Panel to find that Rocca was not involved in the sales practice violation that was the subject of Claimant’s claim against the Respondents and therefore Rocca’s Motion for Expungement is granted under FINRA Rule 2080(b)(1)(B). Rocca’s BrokerCheck® Report states, “The customer alleged that he incurred a significant tax liability as a result of the liquidation of holdings to fund a managed account, contrary to the representations made by the representative.” The evidence presented at the hearing demonstrates that Rocca acted as a Private Wealth Management Advisor providing financial planning and estate planning advice and that he did not make any investment recommendations or provide tax liability advice. King was responsible for providing investment recommendations and tax liability advice to Claimant. This evidence includes the testimony of Rocca and also the testimony of Claimant himself, who was present at the hearing. Claimant testified that Rocca did not provide investment or tax advice. In addition, the Panel reviewed the Settlement Agreement and General Release in this case. These documents together with Rocca’s and Claimant’s testimony disclose that Rocca was not involved in the settlement of this case and did not contribute anything towards the settlement. In addition, Claimant filed a Response to the Motion for Expungement in which he stated that he did not oppose Rocca’s Motion for Expungement. Consequently, it serves no public purpose and unfairly tarnishes the reputation of Rocca for this claim to appear on his BrokerCheck® Report and the Motion for Expungement is hereby granted.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys’ fees, are denied.

The Panel has assessed \$675.00 of the hearing session fees to Claimant.

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

The Panel has assessed \$1,012.50 of the hearing session fees jointly and severally to Fidelity Respondents.

The Panel has assessed \$1,687.50 of the hearing session fees to King.

The Panel has assessed \$1,687.50 of the hearing session fees to Rocca.

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

ARBITRATION PANEL

Theodore W. Wrobleski	-	Public Arbitrator, Presiding Chairperson
Philip C. Stahl	-	Public Arbitrator
James William Hoag	-	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

Theodore W. Wrobleski

Theodore W. Wrobleski
Public Arbitrator, Presiding Chairperson

02/25/2022

Signature Date

Philip C. Stahl

Philip C. Stahl
Public Arbitrator

02/27/2022

Signature Date

James William Hoag

James William Hoag
Public Arbitrator

02/26/2022

Signature Date

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.

February 28, 2022

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