

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Faramaz Bardi
Laleh Bardi
The Bardi Family Trust

Case Number: 20-00707

vs.

Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

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: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Faramaz Bardi, Laleh Bardi, and The Bardi Family Trust (collectively “Claimants”): Marc I. Zussman, Esq., Law Offices of Marc I. Zussman, Los Angeles, California.*

For Respondent Merrill Lynch Pierce Fenner & Smith Inc. (“Respondent”): Jennifer N. Lamirand, Esq., Crowe & Dunlevy, P.C., Oklahoma City, Oklahoma.

*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: March 2, 2020.

Claimants signed the Submission Agreement: February 28, 2020.

Statement of Answer filed on or about: May 28, 2020.

Respondent signed the Submission Agreement: May 29, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; fraud; negligent misrepresentation; breach of implied covenant of good faith & fair dealing; and violation of unfair competition laws - Cal. BPC Section 17200 et al. The causes of action relate to inverse exchange traded funds, ProShares UltraShort Financials (SKF) and Direxion (SPXS).

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, Claimants requested:

1. Compensatory damages based on net out of pocket in an amount not less than \$1,239,693.00 or, in the alternative, compensatory damages based on well managed portfolio in an amount not less than \$2,381,963.00;
2. Disgorgement of fees, commissions, and other remuneration paid to Respondent;
3. Punitive damages;
4. Attorneys' fees and costs;
5. Pre and post-award interest at the legal rate; and
6. Such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested:

1. The claims be dismissed in their entirety;
2. Attorneys' fees and costs; and
3. Expungement of all references to this matter from the Central Registration Depository ("CRD") records of Unnamed Party Aaron Joseph Lapp ("Mr. Lapp") and Unnamed Party Wesley T. Crowley ("Mr. Crowley").

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 29, 2021, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On August 16, 2021, Respondent filed a Motion for Expungement on behalf of Mr. Crowley, to which no response was filed. Respondent withdrew the request for expungement on behalf of Mr. Lapp without prejudice.

The Panel conducted a recorded, telephonic hearing on November 12, 2021, so the parties could present oral argument and evidence on Mr. Crowley's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Mr. Crowley'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 Mr. Crowley did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Respondent's Motion for Expungement with attached exhibits, which included the settlement agreement between Claimants and Respondent.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 2022051) from registration records maintained by the CRD for Unnamed Party Wesley T. Crowley (CRD Number 2331281) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Wesley T. Crowley 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 findings of fact:

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

The claim, allegation, or information is false.

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

Based on the testimony and evidence presented, Mr. Crowley was not involved in the investment-related sales practice violation that was alleged by Claimants, as Mr. Crowley was not assigned to Claimants as clients until after the subject investments were purchased. After Mr. Crowley began handling Claimants' accounts, he did not take any unauthorized or unsuitable action with Claimants' accounts. Claimants did not authorize

or permit Mr. Crowley to take any action with regard to their accounts without Claimants' approval. Thus, the claims against Mr. Crowley are also false.

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	= \$	2,000.00
--------------------------	------	----------

**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 that employed the associated persons at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	3,025.00
Member Process Fee	= \$	6,175.00

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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,400.00/session	= \$	2,800.00
Pre-Hearing Conferences: July 13, 2020	1 session	
May 20, 2021	1 session	
One (1) hearing session on expungement request @ \$1,400.00/session	= \$	1,400.00
Hearing: November 12, 2021	1 session	

Total Hearing Session Fees	= \$	4,200.00
----------------------------	------	----------

The Panel has assessed \$1,400.00 of the hearing session fees to Claimants.

The Panel has assessed \$2,800.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Joseph C. Watson	-	Public Arbitrator, Presiding Chairperson
Barbara M. Zak	-	Public Arbitrator
Maggie Soleimani	-	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

Joseph C. Watson

Joseph C. Watson
Public Arbitrator, Presiding Chairperson

11/15/2021

Signature Date

Barbara M. Zak

Barbara M. Zak
Public Arbitrator

11/17/2021

Signature Date

Maggie Soleimani

Maggie Soleimani
Public Arbitrator

11/16/2021

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.

November 17, 2021

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