

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

James Salter and Frank Petrosino

Case Number: 20-01200

vs.

Respondents

Paulson Investment Company, LLC,
Joey Hain, and Timothy Touloukian

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: Customers vs. Member and Associated Persons

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants James Salter (“Salter”) and Frank Petrosino (“Petrosino”), collectively, referred to as “Claimants”: Lainie E. Cohen, Esq., Lazare Potter Giacomvas & Moyle LLP, New York, New York.*

For Respondent Paulson Investment Company, LLC (“Paulson”): Steven C. Berman, Esq., Stoll Berne, Lokting & Shlachter, P.C., Portland, Oregon.

For Respondent Joey Hain (“Hain”): Todd A. Zuckerbrod, Esq., Todd A. Zuckerbrod, Esq., Todd A. Zuckerbrod, P.A., Boca Raton, Florida.

For Respondent Timothy Touloukian (“Touloukian”): Richard A. Roth, Esq., The Roth Law Firm, PLLC, New York, New York.

Paulson, Hain and Touloukian, hereinafter, collectively referred to as “Respondents.”

*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: April 14, 2020.

Amended Statement of Claim filed on or about: March 10, 2021.

Salter signed the Submission Agreement: April 12, 2020.
Petrosino signed the Submission Agreement: April 13, 2020.

Statement of Answer filed by Paulson on or about: August 14, 2020.
Statement of Answer to the Amended Statement of Claim filed by Paulson on or about: April 27, 2021.
Paulson signed the Submission Agreement: August 4, 2020.

Statement of Answer filed by Hain on or about: August 14, 2020.
Hain signed the Submission Agreement: August 14, 2020.

Statement of Answer filed by Touloukian on or about: August 14, 2020.
Touloukian signed the Submission Agreement: August 13, 2020.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following causes of action: negligence, failure to supervise, failure to conduct due diligence, negligent misrepresentation, fraud in the inducement, fraud, breach of fiduciary duty, unjust enrichment, and respondeat superior. The causes of action related to Claimants' allegation that Respondents misrepresented and omitted material facts when recommending Claimants invest in Energtek, Inc.

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

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

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

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested compensatory damages in an amount to be determined at hearing, but reasonably believed to be in excess of \$700,000.00; punitive damages in an amount no lesser than \$700,000.00; pre- and post-judgment interest at the legal rate; attorneys' fees; costs of arbitration, including FINRA filing fees, expert witness fees, arbitrator fees, and all forum fees and expenses; and such other and further relief as the Panel deems just, proper and equitable.

In the Statement of Answer, as amended, Paulson requested that each and every claim asserted against it in the Statement of Claim, as amended, be dismissed with prejudice and that Claimants be required to pay all costs of arbitration, including filing fees, forum fees and such other costs as deemed reasonable.

In the Statement of Answer, Hain requested dismissal of this action in its entirety; an express finding by the Panel that the allegations involving him are false and unsupported by the

evidence, providing for the expungement of all references to this matter from his Central Registration Depository (“CRD”) registration records; costs incurred in connection with his defense of this matter; and such further relief as the Panel deems just and proper.

In the Statement of Answer, Touloukian requested that Claimants’ claims be denied and that the Panel grant him all legal fees and costs, together with any other relief this Panel deems just and proper.

Touloukian filed a request for expungement of all references to this matter from CRD registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 10, 2021, Claimants filed an Unopposed Motion for Leave to File Amended Statement of Claim. No responses were filed. In an Order dated April 7, 2021, the Panel granted Claimants’ Unopposed Motion for Leave to File Amended Statement of Claim.

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

On September 24, 2021, Hain filed a Motion for Expungement. On October 21, 2021, Paulson filed a response wherein it took no position on Hain’s expungement request. On October 25, 2021, Claimants filed correspondence advising that they would not be participating in the expungement hearings. On November 1, 2021, Hain filed a [Second] Motion for Expungement to which no responses were filed.

On November 5, 2021, Touloukian filed a Motion for Expungement. On October 25, 2021, Claimants filed correspondence advising that they would not be participating in the expungement hearings.

On November 12, 2021, Hain filed a Request for a Separate Expungement Hearing. On November 18, 2021, Touloukian filed a response to Hain’s Request for a Separate Expungement Hearing.

In an Order dated December 6, 2021, the Panel granted Hain’s Request for a Separate Expungement Hearing. The Panel ordered that the separate expungement hearings, for Hain and Touloukian, to be scheduled on the same day.

The Panel conducted a recorded, telephonic hearing on January 19, 2022, so the parties could present oral argument and evidence on Hain’s request for expungement.

Claimants, their counsel, Paulson and Touloukian did not participate in the expungement hearing for Hain’s request for expungement.

The Panel conducted a recorded, telephonic hearing on January 19, 2022, so the parties could present oral argument and evidence on Touloukian's request for expungement.

Claimants, their counsel, Paulson and Hain did not participate in the expungement hearing for Touloukian's request for expungement.

The Panel reviewed Hain and Touloukian's BrokerCheck® Reports. 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 that Hain and Touloukian did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Hain's testimony, Touloukian's testimony and Touloukian's 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 Numbers 2061470 and 2061471) from registration records maintained by the CRD for Respondent Joseph Menachem Hain (CRD Number 4959092) with the understanding that, pursuant to Notice to Members 04-16, Respondent Joseph Menachem Hain 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 false.

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

Hain testified that he made no misrepresentations at all. Hain stated that at the time of the events in question, the statements were true. The fact that the transaction did not occur as originally expected does not negate the fact that the

statements, when made, were true at the time. None of the documentary evidence submitted contradicts Hain's testimony

2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2061772 and 2061774) from registration records maintained by the CRD for Respondent Timothy Robin Touloukian (CRD Number 2803832) with the understanding that, pursuant to Notice to Members 04-16, Respondent Timothy Robin Touloukian 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 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; and

The claim, allegation, or information is false.

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

Touloukian testified that he was not involved in the transaction and made no misrepresentations. Touloukian submitted exhibits containing emails that supported that he was not involved in the transaction.

3. 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 = \$ 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Paulson is assessed the following:

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

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers with three (3) Arbitrators @ \$200.00/decision = \$ 600.00

Paulson submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed \$300.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$300.00 of the discovery-related motion fees jointly and severally to Respondents.

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:

One (1) pre-hearing session with the Panel @ \$1,400.00/session = \$ 1,400.00
Pre-Hearing Conference: October 13, 2020 1 session

Two (2) hearing sessions on expungement requests @ \$1,400.00/session = \$ 2,800.00
Hearings: January 19, 2022 1 session
January 19, 2022 1 session

Total Hearing Session Fees = \$ 4,200.00

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$700.00 of the hearing session fees jointly and severally to Respondents.

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

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

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

ARBITRATION PANEL

Dianne Marie Onichimowski	-	Public Arbitrator, Presiding Chairperson
Leon Fox	-	Public Arbitrator
William James Shimanek	-	Non-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

Dianne Marie Onichimowski

Dianne Marie Onichimowski
Public Arbitrator, Presiding Chairperson

02/11/2022

Signature Date

Leon Fox

Leon Fox
Public Arbitrator

02/11/2022

Signature Date

William James Shimanek

William James Shimanek
Non-Public Arbitrator

02/11/2022

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 11, 2022

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