

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants
Renee Allie
Lisa Craig

Case Number: 20-01422

vs.

Respondent
Stifel, Nicolaus & Co., Inc.

Hearing Site: New Orleans, Louisiana

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 Renee Allie (“Allie”) and Lisa Craig (“Craig”): Jason J. Kane, Esq., Peiffer Wolf Carr Kane Conway & Wise, Rochester, New York.*

Hereinafter, Allie and Craig will collectively be referred to as “Claimants.”

For Respondent Stifel, Nicolaus & Co., Inc. (“Respondent”): Lance Waters, Esq., Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., New Orleans, Louisiana.

*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: May 5, 2020.

Amended Statement of Claim filed on or about: October 19, 2020.

Allie signed the Submission Agreement: May 5, 2020.

Craig signed the Submission Agreement: May 5, 2020.

Statement of Answer filed by Respondent on or about: August 25, 2020.

Respondent signed the Submission Agreement: May 11, 2020.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; violation of NASD and FINRA rules; failure to supervise; negligence; breach of contract; respondeat superior; and violation of Louisiana Blue Sky. The causes of action relate to various unspecified securities.

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 and Amended Statement of Claim, Claimants requested:

1. All losses of principal suffered by Claimants;
2. All interest, commissions and fees paid by Claimants;
3. Loss of income that would have been received had Claimants' account been managed properly, as well as other losses, foreseeable or not, that Claimants suffered, including non-pecuniary losses;
4. Attorneys' fees, costs and other expenses;
5. Interest, both pre-judgment and post-judgment;
6. All other sums Claimants are entitled to at law or equity; and
7. Punitive damages.

In the Statement of Answer, Respondent requested:

1. This action be dismissed;
2. All costs and assessments be borne by Claimants;
3. Respondent be awarded expert witness fees;
4. All such other further and general relief to which it may be entitled; and
5. Expungement of the claims from the FINRA and Central Registration Depository ("CRD") records for Unnamed Party William Geary Mason.

OTHER ISSUES CONSIDERED AND DECIDED

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

On August 25, 2020, Respondent filed a Motion for More Definite Statement. On September 4, 2020, Claimants filed their opposition to the motion. On September 14, 2020, the Panel ordered Claimants to amend the Statement of Claim to specify relevant facts and remedies requested.

On January 31, 2022, Claimants filed a notice of tentative settlement. The parties agreed to hold the previously scheduled hearing dates for the Expungement Hearing pending final settlement.

On February 2, 2022, Respondent filed a Motion for Expungement on behalf of Unnamed Party William Geary Mason, to which no response was filed.

On March 2, 2022, Claimants filed a notice of dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim and Amended Statement of Claim.

The Panel conducted an in-person hearing on February 16, 2022, so the parties could present oral argument and evidence on Unnamed Party William Geary Mason's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Unnamed Party William Geary Mason'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 Unnamed Party William Geary Mason did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimony from William Geary Mason at the expungement hearing; exhibits presented at the expungement hearing by Respondent; the signed settlement agreement; Claimants' Amended Statement of Claim; and William Geary Mason's BrokerCheck® Report.

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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2073322) from registration records maintained by the CRD for Unnamed Party William Geary Mason (CRD Number 1863783) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party William Geary Mason 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:

After consideration of the sworn testimony and documentary evidence, and following full Panel deliberation, the Panel is recommending expungement of Occurrence Number 2073322 from CRD Number 1863783, William Geary Mason, for the following reasons under FINRA Rule 2080(b)(1)(C), the claims, allegations, and information is false:

1. Claimants' allegations that their accounts underperformed the markets, suffered losses, and/or failed to experience any measurable growth are false. Claimants extensive cash withdrawals greatly exceeded the accounts' generation of income, creating a reduction in principal beyond acceptable income production within Claimants' state risk tolerance levels. Claimants were aware of their withdrawals and the effect on their accounts and were counseled by the broker to discuss alternative strategies. Claimants took frequent cash withdrawals from their accounts, frequently in excess of the income production obtained, reducing principal for income generation.
2. Claimants' allegations that their accounts were overconcentrated in the oil, gas, and energy sectors are false. The accounts arrived at Respondent with these concentrations which were actually reduced over Claimants' time there. The level of concentration was well within S&P guidelines.
3. Claimants' allegations that their accounts experienced excessive turnover are false. The entire account history was reviewed during the expungement hearing and the trading level was well below any level of turnover which would suggest excessive trading activity.
4. Claimants' allegations that their investment in high yield bonds was unsuitable are false. These bonds were included in the accounts for income generation in accounts that experienced high levels of cash withdrawals.
5. Claimants' allegations that their oil and gas investments were unsuitable is false. These investments came to Respondent in these accounts and others were specifically selected by Claimants (Craig has a history in the O&G industry). Further, the level of exposure was reduced during the time the accounts were at Respondent.
6. Claimants' allegations that specific investments identified as too high risk are false. These investments, many of which were proposed by Claimants, were suitable for these moderate and moderate-aggressive investment accounts.
7. Allie's allegations that William Geary Mason excessively traded in her account by repeatedly purchased and sold the investment Patriot CL are false. The entire account trading history was reviewed: One purchase of Patriot CL was made early in the account history; then recurring gains/reinvestments were added to the account balance; when the account was being transferred out of Respondent, it could not be received at the new brokerage firm, so it was sold in a multiple entry removing the original balance and each gains/reinvestments debit. A simple review of the account history would have revealed this information.

Therefore, based on the above summary of the testimony and documentary evidence applicable to the particular allegations against the broker, the Panel recommends expungement of this matter.

FEES

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 1,575.00

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

Member Surcharge = \$ 1,900.00
Member Process Fee = \$ 3,750.00

Postponement Fees

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

February 14-15 and 17-18, 2022, postponement requested by parties = \$ 1,125.00

Total Postponement Fees = \$ 1,125.00

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the postponement 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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00
Pre-Hearing Conference: December 21, 2021 1 session

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 3,375.00
Pre-Hearing Conferences: August 17, 2020 1 session
March 15, 2021 1 session
February 3, 2022 1 session

Two (2) expungement hearing sessions @ \$1,125.00/session = \$ 2,250.00
Hearings: February 16, 2022 2 sessions

Total Hearing Session Fees = \$ 6,075.00

The Panel has assessed \$1,912.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$4,162.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Mark A. Myers	-	Public Arbitrator, Presiding Chairperson
Stephen Edgar Eisenbraun	-	Public Arbitrator
Valerie Turner Schexnayder	-	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

Mark A. Myers

Mark A. Myers
Public Arbitrator, Presiding Chairperson

03/08/2022

Signature Date

Stephen Edgar Eisenbraun

Stephen Edgar Eisenbraun
Public Arbitrator

03/08/2022

Signature Date

Valerie Turner Schexnayder

Valerie Turner Schexnayder
Public Arbitrator

03/08/2022

Signature Date

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March 09, 2022

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