

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Leonard James Bejger

Case Number: 20-01456

vs.

Respondents
PeachCap Securities, Inc.
David Harrison Miller
Shelley Long Eddy
Eric Steven Burnette

Hearing Site: Orlando, Florida

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 and Associated Persons

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

REPRESENTATION OF PARTIES

Claimant Leonard James Bejger appeared pro se.

For Respondents PeachCap Securities, Inc. (“PeachCap”), David Harrison Miller (“Miller”), Shelley Long Eddy (“Eddy”), and Eric Steven Burnette (“Burnette”), hereinafter collectively referred to as “Respondents”: Craig Glasser, Esq. and Gregg Breitbart, Esq., Kaufman, Dolowich, Voluck, LLP, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: April 28, 2020.

Leonard James Bejger signed the Submission Agreement: April 28, 2020.

Statement of Answer filed by Respondents PeachCap, Miller, and Eddy on or about: June 30, 2020.

PeachCap Securities, Inc. signed the Submission Agreement: June 30, 2020.

David Harrison Miller signed the Submission Agreement: June 29, 2020.

Shelley Long Eddy signed the Submission Agreement: June 29, 2020.

Claimant’s Arguments (“Reply”) to Respondents’ Answer and Affirmative Defenses filed on or about: July 17, 2020.

Claimant's Introduction of Additional Evidence regarding Unnamed Party Henry Martin Klausman's Declaration ("Klausman") filed on or about: July 21, 2020.

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

Notice of Adoption of Previously filed Answer and Defenses ("Notice of Adoption") filed by Respondent Burnette on or about: October 14, 2020.

Eric Steven Burnette signed the Submission Agreement: February 22, 2021.

CASE SUMMARY

In the Statement of Claim, as amended, Claimant asserted the following causes of action: negligence; material misrepresentations and omissions; unsuitable and inappropriate investments; unauthorized trades; and breach of fiduciary duty. The causes of action relate to Claimant's assertion that Respondents mismanaged Claimant's investment accounts by leaving too much uninvested cash in the accounts and purchasing unsuitable stocks and bonds with the rest, including Pro Shares Ultra VIX Short Term ETF and Barclay Bank PLC Preferred Stock.

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

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

In the Reply to Respondents' Statement of Answer, Claimant denied the affirmative defenses asserted in the Statement of Answer.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimant requested compensatory damages in the amount of \$48,496.70, comprised of investment advisory fees, platform fees, commissions charges, and actual losses.

In the Statement of Answer, Respondents requested dismissal of the Statement of Claim in its entirety and expungement of any reference to this matter from Respondents Eddy and Miller's respective Central Registration Depository ("CRD") records.

In the Reply to Respondents' Statement of Answer, Claimant requested that the Arbitrator enter an award for the Statement of Claim in its entirety and that this matter not be expunged from Respondents Eddy and Miller's CRD records.

In Claimant's Introduction of Additional Evidence regarding Unnamed Party Klausman, Claimant requested expungement on behalf of Unnamed Party Klausman of all alleged false disclosures made against Unnamed Party Klausman.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On or about August 19, 2020, Claimant filed his unopposed Motion to Amend the Statement of Claim for the sole purpose of adding Eric Steven Burnette (“Burnette”) as a respondent in this matter. On or about September 24, 2020, the Arbitrator issued an Order in which he granted Claimant’s Motion to Amend to Add Respondent Burnette.

On or about November 13, 2020, Unnamed Party Klausman withdrew the request for expungement made on his behalf and neither Claimant nor Respondents raised any objections. Therefore, the Arbitrator made no determination with respect to Claimant’s request for expungement on behalf of Unnamed Party Henry Martin Klausman (CRD Number 271217).

On or about April 17, 2021, Respondents Eddy and Miller filed a Motion for Expungement, to which no response was filed.

The Arbitrator conducted a recorded telephonic hearing on April 21, 2021, so the parties could present oral arguments and evidence on Respondents Eddy and Miller’s request for expungement.

Claimant participated in the expungement hearing and opposed the request for expungement.

The Arbitrator reviewed Respondents Eddy and Miller’s respective BrokerCheck® Reports. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Arbitrator noted that this dispute was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: all the pleadings filed in the case and the testimony presented during the expungement hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant’s claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein are denied.
3. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
4. Respondents are jointly and severally liable for and shall pay to Claimant \$300.00 to reimburse Claimant for one-half of the filing fee previously paid to FINRA Dispute Resolution Services.
5. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2076788) from registration records maintained by the CRD for Respondent David Harrison Miller (CRD Number 4648882) with the understanding that,

pursuant to Notice to Members 04-16, Respondent David Harrison Miller must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

6. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2076420) from registration records maintained by the CRD for Respondent Shelley Long Eddy (CRD Number 4862159) with the understanding that, pursuant to Notice to Members 04-16, Respondent Shelley Long Eddy 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 as to both occurrences:

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

Claim, allegation, or information is false.

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

As to Occurrence Number 2076420

Respondent Eddy was sworn in and credibly testified that she had never provided any financial advice to Claimant and that she was on maternity leave during many months of the relevant time period from January 27, 2016, through May 9, 2016. Respondent Eddy further testified that she had never spoken with Claimant, nor provided any kind of financial advice or suitability analysis concerning Claimant and had never received any kind of compensation or payment for any financial services which were provided to Claimant by Respondent PeachCap. Claimant cross-examined Respondent Eddy and submitted into evidence a May 20, 2016, letter which had been previously filed as part of Claimant's final claims, Exhibit G wherein Unnamed Party Klausman informed Claimant that Respondent Eddy was part of the financial team at Respondent PeachCap. However, none of the testimony which was provided by Respondent Eddy was refuted, and the May 20, 2016, letter was explained as a standard letter stating that the team could be involved in Claimant's accounts at Respondent PeachCap. While the letter stated that Claimant could speak with Respondent Eddy if Claimant chose to do so, Claimant never actually tried to do so. As such, the Arbitrator finds that expungement is proper under Rule 2080(b)(1)(B) and holds that Respondent Eddy was not personally involved in any of the alleged investment-related sales practice violations.

As to Occurrence Number 2076788

Likewise, Respondent Miller testified that he was not involved with any of the alleged investment-related sales practice violations. Respondent Miller was likewise cross-examined by Claimant, and his testimony remained consistent and uncontroverted. Moreover, there

was no opposing evidence of any kind which suggested that Respondent Miller was personally involved in providing any kind of financial service to Claimant, nor that he personally received any commission or fees for any financial services which were provided to Claimant. As such, the Arbitrator finds that the requirements under Rule 2080(b)(1)(B) have been met and that Respondent Miller was not personally involved in any of the alleged investment-related sales practice violations.

For the afore-stated reasons, the Arbitrator finds that expungement of the adverse CRD records is appropriate for both, Respondents Eddy and Miller.

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 = \$ 600.00

**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, Respondent PeachCap Securities, Inc. is assessed the following:

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

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session on expungement request @ \$450.00/session = \$ 450.00
Hearing: April 21, 2021 1 session

Total Hearing Session Fees = \$ 450.00

The Arbitrator has assessed the \$450 expungement hearing session fee jointly and severally to Respondents Eddy and Miller.

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

ARBITRATOR

Mauricio Arcadier

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Sole 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.

Arbitrator's Signature

Mauricio Arcadier

Mauricio Arcadier
Sole Public Arbitrator

05/07/2021

Signature Date

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May 10, 2021

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