

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
William Nelms

Case Number: 20-01526

vs.

Respondents
American Portfolios Financial Services, Inc
Brian Joseph DiBrino

Hearing Site: Jersey City, New Jersey

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 Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant William Nelms: Lars Soreide, Esq., Soreide Law Group, PLLC, Pompano Beach, Florida*.

For Respondents American Portfolios Financial Services, Inc, and Brian Joseph DiBrino: Samuel E. Cohen, Esq., Marshall Dennehey Warner Coleman & Goggin, Philadelphia, Pennsylvania.

*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: May 14, 2020.

William Nelms signed the Submission Agreement: May 14, 2020.

Joint Statement of Answer filed by Respondents on or about: July 24, 2020.

American Portfolios Financial Services, Inc signed the Submission Agreement: July 24, 2020.

Brian Joseph DiBrino signed the Submission Agreement: July 22, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence, breach of fiduciary duty, and negligent supervision. The causes of action relate to investments in oil and gas bonds.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested damages of approximately \$500,000.00; interest; costs; punitive damages; attorneys' fee; and any further relief deemed just and proper.

In the Joint Statement of Answer, Respondents requested that Claimant's claims be denied and that the Panel recommend expungement of this matter from Respondent Brian Joseph DiBrino's Central Registration Depository (CRD) Records maintained by FINRA.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 24, 2021, Claimant filed a notice of settlement and request that the case remain open as Brian Joseph DiBrino may choose to seek expungement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On April 8, 2021, Respondent Brian Joseph DiBrino filed a Motion for Expungement to which no response was filed.

The Panel conducted a recorded hearing by videoconference on June 16, 2021, so the parties could present oral argument and evidence on Brian Joseph DiBrino's request for expungement.

Claimant and counsel did not participate in the expungement hearing.

The Panel reviewed Brian Joseph DiBrino 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 Brian Joseph DiBrino did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Motion for Expungement; Respondent Brian Joseph DiBrino's testimony; Respondent Brian Joseph DiBrino's BrokerCheck® Report; the Settlement Agreement and other 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, 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 2076859) from registration records maintained by the CRD for Respondent Brian Joseph DiBrino (CRD Number 2837066) with the understanding that, pursuant to Notice to Members 04-16, Respondent Brian Joseph DiBrino 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:

The Statement of Claim alleged two counts against Brian Joseph DiBrino (“DiBrino”) – one for unspecified negligence and one for breach of fiduciary duty by overconcentrating Claimant’s account in unsuitable debt and failure to limit Claimant’s losses. It appears that both counts essentially sound in a claim of unsuitability. In support, the Statement of Claim alleged that Claimant was retired at the time the account was opened and looking to protect principal and generate income to sustain him through retirement, that Claimant was solely reliant on DiBrino for suitable recommendations and that DiBrino switched conservative investments brought into the account by Claimant with more risky ones.

All of these allegations were shown by testimony and documents admitted into evidence to be false.

Respondent DiBrino testified under oath that (1) the opening of the account and the initial investment in the account were initiated by Claimant; (2) all investments in the account which DiBrino recommended were discussed with Claimant who was an experienced and knowledgeable investor who asked sophisticated questions and made his own investment decisions; (3) no investments were transferred into the account from other accounts; and (4) although the value of the investments in the account had declined when Claimant filed his Statement of Claim, the value had increased significantly by June 2021 and the account would have yielded a profit had the investments remained in the account. Documents admitted into evidence supported DiBrino’s testimony and further showed that the account was only a small part of Claimant’s assets, that he was not retired at the time of account opening and that he had tolerance for risk. Accordingly, the Panel finds that the claim is false.

2. Any and all claims for relief not specifically addressed herein are denied.

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 = \$ 1,425.00

**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 American Portfolios Financial Services, Inc. is assessed the following:

Member Surcharge = \$ 1,900.00

Member Process Fee = \$ 3,750.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

May 5, 2021, cancellation requested by Respondent Brian Joseph DiBrino. = \$ 300.00

Total Late Pre-Hearing Cancellation Fees = \$ 300.00

The Panel has assessed the \$300.00 late pre-hearing cancellation fees to Respondent Brian Joseph DiBrino.

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 @ \$1,125.00/session = \$ 2,250.00

Pre-Hearing Conferences: September 8, 2020 1 session

May 27, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00

Hearing: June 16, 2021 1 session

Total Hearing Session Fees = \$ 3,375.00

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

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$2,250.00 of the hearing session fees to Respondent Brian Joseph DiBrino, which includes the fees for the June 16, 2021 expungement hearing.

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

ARBITRATION PANEL

Edith M. Novack	-	Public Arbitrator, Presiding Chairperson
James M. Baumann	-	Public Arbitrator
Robert R. Salman	-	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

Edith M. Novack

Edith M. Novack
Public Arbitrator, Presiding Chairperson

06/25/2021

Signature Date

James M. Baumann

James M. Baumann
Public Arbitrator

06/24/2021

Signature Date

Robert R. Salman

Robert R. Salman
Public Arbitrator

06/23/2021

Signature Date

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June 25, 2021

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