

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Robert F. Hawk and Alison M. Hawk

Case Number: 20-01540

vs.

Respondents

Peachcap Securities, Inc.,
David Harrison Miller,
Shelley Long Eddy, and
Eric Steven Burnette

Hearing Site: Atlanta, Georgia

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

REPRESENTATION OF PARTIES

Claimants Robert F. Hawk and Alison M. Hawk (“Claimants”) appeared pro se.

For Respondents Peachcap Securities, Inc. (“Peachcap”), David Harrison Miller (“Miller”), Shelley Long Eddy (“Eddy”), and Eric Steven Burnette (“Burnette”) (collectively, “Respondents”): Craig R. Glasser, Esq. and Gregg J. Breitbart, Esq., Kaufman Dolowich & Voluck, LLP, Fort Lauderdale, Florida.

CASE INFORMATION

Statement of Claim filed on or about: May 15, 2020.

Amended Statement of Claim filed on or about: June 27, 2020.

Claimants signed the Submission Agreement: May 4, 2020 and June 29, 2020.

Statement of Answer by Respondents filed on or about: July 27, 2020.

Peachcap signed the Submission Agreement: July 27, 2020.

Miller, Eddy, and Burnette did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, as amended, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, unauthorized trading, suitability, and material

misrepresentation and omissions. The causes of action related to Claimants' allegation that Respondents mismanaged their investment account, including recommending an illegal and unsuitable investment in ProShares Ultra VIX Short Term Futures ("UVXY").

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested damages as follows: \$35,000.00 for investment advisory fees, \$2,500.00 for platform fees, \$500.00 for commissions, and \$10,993.00 for the UVXY actual loss.

In the Statement of Answer, Respondents requested an award dismissing the Statement of Claim in its entirety and expungement of all references to this matter from Miller's and Eddy's Central Registration Depository ("CRD") records.

Respondents also filed a request for expungement of all references to this matter from Burnette's CRD records. Please see the Other Issues Considered and Decided of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

Miller, Eddy, and Burnette did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Arbitrator on all issues submitted.

On July 26, 2020, Claimants filed a letter to FINRA, requesting expungement on behalf of Unnamed Party Henry M. Klausman ("Klausman"). On November 19, 2020, Claimants withdrew their request for expungement on behalf of Klausman.

On January 20, 2021, Respondents filed a Pre-Hearing Brief, requesting expungement of all references to this matter from Miller's, Eddy's, and Burnette's CRD records.

On January 25, 2021, FINRA Dispute Resolution Services advised the parties that the Arbitrator had requested an expungement hearing and that the Arbitrator's determination on the merits of Claimants' claims and Respondents' expungement request would be provided in the Arbitrator's final award.

On January 27, 2021, Respondents filed a Notice of Withdrawal of Expungement Request for Burnette.

On February 11, 2021, Respondents filed a Submission in Support of the Request for Expungement for Miller and Eddy. The same day, Claimants filed a response ("Claimants' Response") opposing the expungement requests.

The Arbitrator conducted a recorded, telephonic hearing on February 12, 2021, so the parties could present oral argument and evidence on Miller's and Eddy's request for expungement.

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

The Arbitrator reviewed Miller's and Eddy's 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.

In recommending expungement, the Arbitrator relied on the following documentary or other evidence: Miller's and Eddy's testimony, Submission in Support of the Request for Expungement for Miller and Eddy, and Claimants' Response.

AWARD

After considering the pleadings, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Numbers 2076787 and 2076417) from registration records maintained by the CRD for Respondents David Harrison Miller (CRD Number 4648882) and Shelley Long Eddy (CRD Number 4862159) with the understanding that, pursuant to Notice to Members 04-16, Respondents David Harrison Miller and 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 Arbitrator has made the following Rule 2080 affirmative finding of fact:

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

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

The evidence demonstrated that neither Miller nor Eddy had contact or communication with Claimants prior to the arbitration. Miller and Eddy further testified that they had no role in either administering or making decisions with respect to the Claimants' accounts.

3. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimants deposited previously.

4. Respondents are jointly and severally liable for and shall pay to Claimants \$300.00 to reimburse Claimants for the half of the filing fee previously paid to FINRA Dispute Resolution Services.
5. Any and all relief not specifically addressed herein, including requests for punitive damages and attorneys' fees, if any, 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 = \$ 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, Peachcap 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: February 12, 2021 1 session		
Total Hearing Session Fees	= \$	450.00

The Arbitrator has assessed \$225.00 of the hearing session to Miller.

The Arbitrator has assessed \$225.00 of the hearing session fees to Eddy.

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

ARBITRATOR

Richard Jonathan Nikonovich-
Kahn

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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

Richard Jonathan Nikonovich-Kahn

Richard Jonathan Nikonovich-Kahn
Sole Public Arbitrator

02/26/2021

Signature Date

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February 26, 2021

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