

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Francis G. Hayden

Case Number: 20-01541

vs.

Respondent
GWFS Equities, Inc.

Hearing Site: Louisville, Kentucky

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

REPRESENTATION OF PARTIES

For Claimant Francis G. Hayden (“Claimant”): Gregory L. Smith, Esq., Smith & Hoskins, PLLC, Louisville, Kentucky.

For Respondent GWFS Equities, Inc. (“Respondent”): Ryan R. Baker, Esq., Bass, Berry & Sims PLC, Memphis, Tennessee.

CASE INFORMATION

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

Claimant signed the Submission Agreement: May 15, 2020.

Statement of Answer filed on or about: July 7, 2020.

Respondent signed the Submission Agreement: July 7, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: misrepresentations and omission of material facts, unsuitable transactions, breach of fiduciary duty, common law fraud, common law negligence, statutory control person liability, agency liability, and failure to reasonably supervise. The causes of action related to Claimant’s allegation that his request to roll over his 401(k) into two separate individual retirement accounts by the first of October 2018 was not executed until mid-October, resulting in his 401(k) suffering a substantial loss in value.

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, Claimant requested \$30,713.00 in compensatory damages pursuant to Kentucky law and FINRA Rules; prejudgment interest, not to exceed \$10,000.00, pursuant to Kentucky law from the date the individual account was funded until the Award is rendered against Respondent; post-judgment interest, not to exceed \$5,000.00, pursuant to Kentucky law from the date of the Award until the Award is paid in full; and costs, not to exceed \$4,000.00, including FINRA filing fees, forum session fees, and expert witness fees.

In the Statement of Answer, Respondent requested that Claimant's claims be denied, that Claimant be awarded nothing, and an award of costs, expenses, and attorneys' fees incurred.

In Claimant's Brief in Support of Claim for Relief, Claimant requested \$30,173.00 in compensatory damages pursuant to Kentucky law and FINRA Rules, lost investment value in the amount of \$9,161.69, interest and attorneys' fees pursuant to Kentucky law, and post-judgment interest from the date of the Award until paid in full pursuant to Kentucky law and FINRA Rules.

In Respondent's Opposition to Claimant's Brief in Support of Claim for Relief, Respondent requested that Claimant's claims be denied, that he be awarded nothing, and an award of costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 9, 2020, during the Initial Pre-Hearing Conference Call, Claimant requested that this matter be considered on the paper submissions pursuant to Rule 12800(c)(1) of the Code of Arbitration Procedure ("Code"), rather than Rule 12800(c)(3)(B) as originally requested. Respondent agreed to Claimant's request. In an Order dated September 9, 2020, the Arbitrator granted Claimant's request.

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. Claimant's claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.
3. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
4. Respondent is liable for and shall pay to Claimant the sum of \$300.00 to reimburse Claimant for one-half of the filing fee previously paid to FINRA Dispute Resolution Services.

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
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**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(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent 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) pre-hearing session @ \$450.00/session	=\$ 450.00
Pre-Hearing Conference: September 9, 2020 1 session	

Total Hearing Session Fees	=\$ 450.00
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The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

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

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

ARBITRATOR

Jim Geiger

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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

Jim Geiger

Jim Geiger
Sole Public Arbitrator

02/24/2021

Signature Date

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February 24, 2021

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