

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Ameriprise Financial Services, LLC
American Enterprise Investment Services, Inc.

Case Number: 20-01547

vs.

Respondents

Mariam Silverman, individually and as Trustee of the
M Silverman Living Trust; M Silverman Living Trust
Dated 12/5/18; and 31569 Enterprises, LLC

Hearing Site: Boca Raton, 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: Members vs. Customers vs. Members

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Ameriprise Financial Services, LLC and American Enterprise Investment Services, American Enterprise Investment Services, Inc. (collectively “Claimants”): Niels P. Murphy, Esq. and Lawton R. Graves, Esq., Murphy & Anderson, Jacksonville, Florida.

For Respondents Mariam Silverman, individually and as Trustee of the M Silverman Living Trust (“Marian Silverman”); M Silverman Living Trust Dated 12/5/18 (“M Silverman Living Trust”); and 31569 Enterprises LLC (collectively “Respondents”): Jeffrey B. Kaplan, Esq., Dimond Kaplan & Rothstein, P.A., Miami, Florida.

CASE INFORMATION

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

Ameriprise Financial Services, LLC signed the Submission Agreement: May 15, 2020.

American Enterprise Investment Services, Inc. signed the Submission Agreement: May 15, 2020.

Statement of Answer and Counterclaim filed by Respondents on or about: July 10, 2020.

Mariam Silverman signed the Submission Agreement: July 14, 2020.

M Silverman Living Trust dated 12/5/18 signed the Submission Agreement: July 14, 2020.

31569 Enterprises, LLC signed the Submission Agreement: July 14, 2020.

Answer to Counterclaim filed by Claimants on or about: August 13, 2020.

CASE SUMMARY

In the Amended Statement of Claim, Claimants asserted the cause of action of breach of contract. The cause of action relates to Respondents' alleged failure to pay their margin debt.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In their Counterclaim, Respondents asserted the following causes of action: negligence and breach of fiduciary duty; negligent training and negligent supervision. The causes of action relate to Claimants' alleged failure to timely open Respondents' accounts.

In Claimants' Answer to Counterclaim, Claimants denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

In the Statement of Claim, as amended, Claimants requested compensatory damages of at least \$318,322.11, with a specific amount to be determined at trial.

In the Counterclaim, Respondents requested: (1) compensatory damages comprised of (a) approximately \$1,500,000.00, as a return of lost principal, plus pre-judgment interest at the statutory rate; and (b) either sufficient additional compensatory damages to pay off the outstanding margin debt *or* forgiveness of the outstanding margin balance; (2) lost opportunity to benefit from the recovery from the COVID-19-related market crash; (3) denial of all aspects of Claimants' claim against Respondents; and (4) such additional relief deemed appropriate based on fairness and equity.

In Claimants' final Damages Submission, Claimants requested: damages in the amount of \$339,671.00; reimbursement of its filing fees in the amount of \$2,125.00; and that Respondents be responsible for all hearing session fees not previously allocated.

In Respondents' final Request for Relief Submission, Respondents requested: compensatory damages of \$1,378,352.69 in favor of Mariam Silverman, as Trustee of the M Silverman Living Trust from Claimant Ameriprise Financial Services, LLC; prejudgment interest at the rate of 10% pursuant to Minnesota Statute Sec. 549.09 Subdivision 1.(b) and 1.(c)(2), from the date the Counterclaim was filed (July 10, 2020) through June 30, 2021, in the amount of \$134,072.37, plus 10% annual interest from the date of the Award through the date the Award is paid; costs in the amount of \$2,740.00, comprised of a FINRA filing fee of \$2,000.00 and an expert damages analysis fee of \$740.00; and the dismissal and denial of all claims filed by Claimants against Respondents.

OTHER ISSUES CONSIDERED AND DECIDED

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

Claimants amended their Statement of Claim prior to FINRA's service upon Respondents. Therefore, FINRA served only the Amended Statement of Claim upon Respondents, and deemed the Amended Statement Claim the only Statement of Claim filed by Claimants in this case.

On or about March 4, 2021, Respondents filed a Motion Requesting a Zoom Final Hearing, to which Claimants objected. On or about March 25, 2021, the Panel issued an Order granting Respondents' Motion.

At the hearing, the parties stipulated to the dismissal of Respondent 31569 Enterprises, LLC as a party in this matter with respect to all claims and counterclaims asserted by any party. Therefore, the Panel made no determinations with respect to Respondent 31569 Enterprises, LLC.

The Award in this matter may be executed in counterpart copies.

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:

1. Respondents Mariam Silverman and M Silverman Living Trust are jointly and severally liable for and shall pay to Claimants the sum of \$339,671.00 in compensatory damages.
2. Respondents Mariam Silverman and M Silverman Living Trust are jointly and severally liable for and shall pay to Claimants \$1,000.00 to reimburse Claimants for the non-refundable portion of the filing fee previously paid by Claimant Ameriprise Financial Services, LLC to FINRA Dispute Resolution Services.
3. Respondents' Mariam Silverman and M Silverman Living Trust's Counterclaim is denied in its entirety.
4. 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	= \$ 2,125.00
Counterclaim Filing Fee	= \$ 2,000.00

**The filing fee is made up of a non-refundable and a refundable portion.*

Pursuant to Rule 12902(d)/13902(d) of the Code, FINRA shall retain the total amount of the filing fee deposited by Claimant/Respondent since this office was notified by the parties that they settled or withdrew this matter within 10 calendar days of the first scheduled hearing session.

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 parties, Claimants Ameriprise Financial Services, LLC and American Enterprise Investment Services, Inc. are each assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 6,175.00

Postponement Fees

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

May 4, 2021 – May 7, 2021, postponement requested by parties	WAIVED
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The Panel has determined to waive the total postponement fees.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

May 4, 2021, cancellation requested by parties	WAIVED
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The Panel has determined to waive the total last-minute cancellation fees

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	= \$ 200.00
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Claimants submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed the total discovery-related motion fees jointly and severally to Respondents Mariam Silverman and M Silverman Living Trust.

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 the Panel @ \$1,125.00/session	= \$ 1,125.00
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Pre-Hearing Conference: September 15, 2020	1 session	
Six (6) hearing sessions @ \$1,125.00/session		= \$ 6,750.00
Hearings: June 28, 2021	2 sessions	
June 29, 2021	2 sessions	
June 30, 2021	2 sessions	
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Total Hearing Session Fees		= \$ 7,875.00

The Panel has assessed the total hearing session fees jointly and severally to Respondents Mariam Silverman and M Silverman Living Trust.

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

ARBITRATION PANEL

Richard J. Kaplan	-	Public Arbitrator, Presiding Chairperson
David P. Slater	-	Public Arbitrator
Alessandra Piras Torrens	-	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

Richard J. Kaplan

Richard J. Kaplan
Public Arbitrator, Presiding Chairperson

07/19/2021

Signature Date

David P. Slater

David P. Slater
Public Arbitrator

07/19/2021

Signature Date

Alessandra Piras Torrens

Alessandra Piras Torrens
Public Arbitrator

07/20/2021

Signature Date

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July 20, 2021

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