

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Karin B. Von Burg

Case Number: 20-01987

vs.

Respondent  
Calton & Associates, Inc.

Hearing Site: San Francisco, California

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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

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Karin B. Von Burg (“Claimant”): Mark A. Tepper, Esq. and Brett Alaca, Esq., Mark A. Tepper, P.A., Fort Lauderdale, Florida.

For Respondent Calton & Associates, Inc. (“Respondent”): Lloyd R. Schwed, Esq. and Bailey Fore, Esq., Schwed Kahle & Kress, P.A., Palm Beach Gardens, Florida, and Jane E. Schwed, Hall Griffin LLP, Santa Ana, California.

**CASE INFORMATION**

Statement of Claim filed on or about: June 23, 2020.  
Claimant signed the Submission Agreement: June 23, 2020.

Statement of Answer filed by Respondent on or about: August 14, 2020.  
Respondent signed the Submission Agreement: August 14, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: violations of FINRA rules; failure to supervise; suitability; misrepresentation; breach of duty of fair dealing; and omission of facts. The causes of action relate to two Real Estate Investment Trusts (“REITs”), including Griffin American Healthcare REIT IV and Phillips Edison ARC Grocery Center REIT II, Inc., La Jolla Pharmaceutical Company stock, and Energous Corporation stock.

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:

1. Rescissionary damages in the amount of \$238,604.00;
2. An amount equal to the purchase price of each REIT, plus interest, from the date of purchase, at the legal rate until full payment is made, in the amount of \$75,000.00 plus interest, minus income received;
3. Alternatively, award damages under such other state securities laws that Respondent violated;
4. Pre-judgment interest at the Nevada legal rate through the date of payment;
5. Return of the commissions on the two REITs and Claimant's account;
6. Punitive damages in the amount of \$500,000.00;
7. Reimbursement for Claimant's arbitration costs, including expert witness fees;
8. Reimbursement for Claimant's FINRA filing fee, plus any additional forum fees accrued related to this arbitration; and
9. Such other and further relief as is fair and equitable.

In the Statement of Answer, Respondent requested:

1. Denial of Claimant's claims in their entirety;
2. All fee assessments by FINRA be borne by Claimant;
3. Costs, travel expenses, attorneys' fees, and expert witness fees;
4. Expungement of any record of this arbitration from the Central Registration Depository ("CRD") records of all involved registered representatives, including Unnamed Party Christopher Joseph McCoy ("McCoy"); and
5. Such other and further relief as the Panel deems just and equitable.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

During the hearing, the Panel replaced the previously received recorder as it did not work properly. The evidentiary hearing was recorded in its entirety using the back-up recorder and another recorder provided by FINRA Dispute Resolution Services midweek.

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. Claimant's claims are denied in their entirety.

2. Unnamed Party Christopher Joseph McCoy’s (CRD Number 4113108) request for expungement of the above-captioned arbitration (Occurrence Number 2080266) from his registration records maintained by the CRD is denied.
3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys’ fees, 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 = \$ 1,725.00

*\*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 is assessed the following:

Member Surcharge = \$ 2,475.00  
Member Process Fee = \$ 5,075.00

**Late Pre-Hearing Cancellation Fees**

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

January 15, 2021, cancellation requested by parties = \$ 100.00  
April 29, 2021, cancellation requested by parties = \$ 300.00

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Total Late Pre-Hearing Cancellation Fees = \$ 400.00

The Panel has assessed \$250.00 of the late pre-hearing cancellation fees to Claimant.

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Respondent.

**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

Claimant submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 200.00

The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$100.00 of the discovery-related motion fees to Respondent.

**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 a single Arbitrator @ \$450.00/session	= \$	900.00
Pre-Hearing Conferences: January 8, 2021	1 session	
February 24, 2021	1 session	
Five (5) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	6,500.00
Pre-Hearing Conferences: October 12, 2020	1 session	
March 8, 2021	1 session	
March 24, 2021	1 session	
April 14, 2021	1 session	
July 8, 2021	1 session	
Eight (8) hearing sessions @ \$1,300.00/session	= \$	10,400.00
Hearings: August 2, 2021	2 sessions	
August 3, 2021	2 sessions	
August 4, 2021	2 sessions	
August 5, 2021	2 sessions	
<hr/> Total Hearing Session Fees	= \$	17,800.00

The Panel has assessed \$4,350.00 of the hearing session fees to Claimant.

The Panel has waived \$450.00 of the hearing session fees.

The Panel has assessed \$13,000.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Laurel Littman Gothelf	-	Public Arbitrator, Presiding Chairperson
Joseph C. Roberts	-	Public Arbitrator
Gary H. Kahn	-	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**

***Laurel Littman Gothelf***

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Laurel Littman Gothelf  
Public Arbitrator, Presiding Chairperson

**08/24/2021**

\_\_\_\_\_  
Signature Date

***Joseph C. Roberts***

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Joseph C. Roberts  
Public Arbitrator

**08/24/2021**

\_\_\_\_\_  
Signature Date

***Gary H. Kahn***

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Gary H. Kahn  
Public Arbitrator

**08/24/2021**

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Signature Date

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August 25, 2021

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