

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Charles J. Rizzo,
Linda P. Rizzo, and
Linda P. Currier Living Trust

Case Number: 20-02045

vs.

Respondent

Newbridge Securities Corporation

Hearing Site: Orlando, 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: Customers vs. Member

REPRESENTATION OF PARTIES

For Claimants Charles J. Rizzo, Linda P. Rizzo, and Linda P. Currier Living Trust (collectively, “Claimants”): Kristian Kraszewski, Esq., Kyros Law, Miami, Florida.*

For Respondent Newbridge Securities Corporation (“Respondent”): Gregg J. Breitbart, Esq. and Kevin Tragesser, Esq., Kaufman Dolowich & Voluck, LLP, Fort Lauderdale, Florida.

*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: June 29, 2020.

Claimants signed the Submission Agreement: June 29, 2020.

Respondent did not file a Statement of Answer.

Respondent signed the Submission Agreement: May 2, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; violation of FINRA Rules, breach of contract, and negligence; and negligent supervision. The causes of action relate to Claimants’ allegation that they suffered losses as a result of an

overconcentration in a variety of high yield, high risk investments, such as unspecified real estate investment trusts (“REITs”), master limited partnerships (“MLPs”), alternative investments, and preferred stocks.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested actual damages of no less than \$90,000.00, as well as damages for the loss of income that would have been received had Claimants’ money been managed properly, as well as all other losses, foreseeable or not, that Claimants suffered, including non-pecuniary losses; disgorgement and return of all fees, management charges, and commissions; interest on Claimants’ losses at the legal rate; Claimants’ costs and expenses; rescission and/or statutory damages; and such other and additional damages and relief as may be shown at hearing and which the Arbitrator deems just and equitable.

Respondent filed a request for expungement, on behalf of Unnamed Party, Michael Whitaker (“Whitaker”), of all references to this matter from Central Registration Depository (“CRD”) registration records. Please see the Other Issues Considered and Decided section 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.

On October 1, 2020, Claimants filed a notice of settlement. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 19, 2020, Respondent filed a Motion for Expungement, on behalf of Whitaker, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on January 27, 2021, so the parties could present oral argument and evidence on Whitaker’s request for expungement.

Neither Claimants nor Claimants’ counsel participated in the expungement.

The Arbitrator reviewed the BrokerCheck® Report for Whitaker. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in CRD.

The Arbitrator also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Whitaker contributed the full settlement amount, as stated in the BrokerCheck® Report. The Arbitrator noted that the matter was settled to avoid the time and costs of arbitration.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Whitaker’s Exhibits 1-14, Statement of Claim, and Whitaker’s testimony.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2079841) from registration records maintained by the CRD for Unnamed Party Michael Leonard Whitaker (CRD Number 1739854) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Michael Leonard Whitaker 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 Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Claimants and Whitaker met and had an extensive, in-person due diligence discussion. The trust’s investment objectives were growth and income with a moderate risk tolerance. The individual/IRA accounts had the same investment objectives and their risk tolerance was low to moderate. Claimants changed their investment objectives to increase income through, among other things, the use of alternative investments. For over seven years, Claimants met in-person with Whitaker every two months for two to three hours each time. During these meetings, Claimants and Whitaker reviewed the accounts and investments in detail. Claimants attended numerous product-specific, non-sales oriented, educational seminars presented by Whitaker, including REIT and alternative investment seminars. No objection to the investment strategy was raised, until the filing of this arbitration case.

The testimony and evidence showed that Claimants were informed and made their own decisions, including decisions that were contrary to Whitaker’s advice. At times, without seeking Whitaker’s advice, they made unsolicited purchases of the very types of investments they later alleged were too risky or overconcentrated, including REITs, MLPs, alternative investments, and preferred stocks. Whitaker provided evidence that the alternative investments purchased with him were not overconcentrated and were a relatively small portion of Claimants’ net worth. Based on the pleadings, testimony, and documentary evidence presented, I find that Claimants received proper risk disclosures for their investments and agreed to the risks; they were at all times well informed of the risks, investment strategy, liquidity, and composition of their investment portfolios; the investments were consistent with their investment objectives, risk tolerance, investment

horizon, and liquidity needs and were suitable for them; and no improper overconcentration of the accounts was caused by Whitaker.

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	= \$	975.00
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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(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	= \$	1,100.00
Member Process Fee	= \$	2,250.00

Late Pre-Hearing Cancellation Fees

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

October 21, 2020, cancellation requested by Claimants	= \$	100.00
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Total Late Pre-Hearing Cancellation Fees	= \$	100.00
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The Arbitrator has assessed the total late pre-hearing cancellation fees, jointly and severally, to Claimants.

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: November 30, 2020	1 session	

One (1) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing: January 27, 2021	1 session	

Total Hearing Session Fees	= \$	900.00
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The Arbitrator has assessed the total hearing session fees to Respondent.

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

ARBITRATOR

John P. Cullem

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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

John P. Cullem

John P. Cullem
Sole Public Arbitrator

02/09/2021

Signature Date

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.

February 09, 2021

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