

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

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In the Matter of the Arbitration Between:

Claimants

David Kucharsky  
Ellen Kucharsky

Case Number: 20-02087

vs.

Respondent

Dawson James Securities, Inc.

Hearing Site: Boca Raton, Florida

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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: Customers vs. Member

This case was decided by an all-public panel.

The expungement hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants David Kucharsky and Ellen Kucharsky: Sheldon P. Starke, Esq., Beachwood, Ohio.

For Respondent Dawson James Securities, Inc.: Zachary Hayes-Macaluso, Esq. and Gregg Breitbart, 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: July 1, 2020.

Ellen Kucharsky signed the Submission Agreement: July 1, 2020.

David Kucharsky signed the Submission Agreement: July 1, 2020.

Statement of Answer filed by Respondent on or about: August 27, 2020.

Dawson James Securities, Inc. signed the Submission Agreement: August 26, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: violations of FINRA Rule 2111, recommending and selling securities without adequate due diligence and without a reasonable basis (negligent due diligence); common law negligence (suitability); violations of FINRA Rule 2110 (professional negligence); common law negligence and professional negligence; negligent misrepresentations and omissions of material facts; and breach of fiduciary duty. The causes of action relate to their United Development Funding investments in real estate investment trusts, as well as investments in alleged high-risk, high-commission and illiquid alternative investments.

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, Claimants requested: compensatory damages in an unspecified amount; punitive damages; pre-judgment interest; costs, including attorneys' and consulting fees; other and further relief as the Panel deems just and proper; and that the damage calculations indicate that, had the accounts been suitably, or properly managed, there would not have been out of pocket loss, plus a market-adjusted damage component.

In the Statement of Answer, Respondent requested that Claimants' claims be dismissed against Respondent and that this matter be expunged from Unnamed Party Willard Louis Pugh's ("Pugh") public and non-public Central Registration Depository ("CRD") registration records.

Respondent filed a request for expungement on behalf of Unnamed Party Pugh of all references to this matter from CRD registration records. Please see the Other Issues Considered and Decided section of this Award for more information on Respondent's expungement request.

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

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

On December 28, 2021, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On December 21, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Pugh.

On December 22, 2021, Respondent filed an Amended Motion for Expungement on behalf of Unnamed Party Pugh, for the sole purpose of correcting a drafting error misidentifying the relevant FINRA Case Number, to which Claimants advised that they do not intend to participate in the expungement proceedings.

The Panel conducted a recorded hearing by videoconference on February 14, 2022, so the parties could present oral argument and evidence on Unnamed Party Pugh's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Unnamed Party Pugh's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD. While the panel took note of other suitability claims made against Unnamed Party Pugh in the BrokerCheck® disclosures, it finds, on balance, that the dictates of Rule 2080(b)(1)(C) have been met in relation to the Customers in this complaint.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel recognized that the settlement amount was substantial in relation to the claimed damages, but this was not enough to overcome the credible testimony and corroborating documentation in support of the request for expungement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Unnamed Party Pugh did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: letters written by the Customers at time of purchase of the investments; subscription agreement; settlement agreement, including Unnamed Party Pugh's non-involvement or financial participation; and Claimant David Kucharsky's signed declaration, dated February 9, 2022.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2082063) from registration records maintained by the CRD for Unnamed Party Willard Louis Pugh (CRD Number 1757428) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Willard Louis Pugh 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 Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The Panel finds the investment to have been suitable for the Customers, appropriate diligence was performed prior to the investment being made, the Customers were sophisticated and well informed regarding the investment recommended, and the Customers may not have/will not have suffered any actual damage. While certainly in no way dispositive, we note the support of the Customers in question, who are still customers, for expungement. Accordingly, it is found that the claim made for unsuitability was false.

### **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 = \$ 1,575.00

*\*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 = \$ 1,900.00  
Member Process Fee = \$ 3,750.00

#### **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  
Pre-Hearing Conference: November 2, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00  
Hearing: February 14, 2022 1 session

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Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Steven R. Reininger	-	Public Arbitrator, Presiding Chairperson
Will Murphy	-	Public Arbitrator
Gary Frederick Birnberg	-	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**

***Steven R. Reininger***

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Steven R. Reininger  
Public Arbitrator, Presiding Chairperson

***02/17/2022***

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

***Will Murphy***

\_\_\_\_\_  
Will Murphy  
Public Arbitrator

***02/22/2022***

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

***Gary Frederick Birnberg***

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Gary Frederick Birnberg  
Public Arbitrator

***02/18/2022***

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

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February 23, 2022

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