

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

William G. Barrett, Individually and
on behalf of the William G. Barrett Roth IRA

Case Number: 20-02094

vs.

Respondents

Ausdal Financial Partners, Inc. and
Sentinus-Halo Securities, LLC

Hearing Site: Milwaukee, Wisconsin

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. Members

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants William G. Barrett (“Barrett”), Individually and on behalf of the William G. Barrett Roth IRA, collectively, “Claimants”: Joseph R. Wojciechowski, Esq., Stoltmann Law Offices, P.C., Barrington, Illinois.*

For Respondents Ausdal Financial Partners, Inc., (“Ausdal”) and Sentinus-Halo Securities, LLC (“Sentinus”), collectively, Respondents: Nancy L. Hendrickson, Esq., O’ Hagan Meyer LLC, Chicago, Illinois.

*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 2, 2020.

Claimant signed the Submission Agreement: July 1, 2020.

Statement of Answer filed by Ausdal on or about: September 18, 2020.

Amended Statement of Answer filed by Ausdal on or about: June 1, 2021.

Ausdal did not sign the Submission Agreement.

Statement of Answer filed by Sentinus on or about: September 18, 2020.
Sentinus did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violation of the Wisconsin Uniform Securities Law; breach of fiduciary duty; violations of FINRA Rules 2010, 2120, 2111, 2111.05(a), and 3110; negligence and negligent supervision; and vicarious liability. The causes of action related to Claimants' allegation that Unnamed Party John Robert Davenport ("Davenport") recommended unsuitable investments in GPB Holdings Fund II and LJM Preservation and Growth Fund ("LJMIX").

Unless specifically admitted in the Statement of Answer, as amended, Ausdal denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Sentinus denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested that the Panel award damages from Ausdal as follows:

- A. Rescission of his GPB Automotive Fund investment in the amount of \$100,000.00;
- B. Alternatively, to the extent Claimants are able to realize losses in the illiquid GPB Holdings II, compensatory damages to be determined at hearing;
- C. Punitive damages as authorized by *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995) and the [FINRA] Arbitrator's Manual;
- D. Interest at 5%, attorneys' fees, and costs, pursuant to Wis. Stat. § 551.59; and
- E. Such other and further relief as this Panel deems just and proper.

In the Statement of Claim, Claimants requested that the Panel award damages from Sentinus as follows:

- A. Compensatory damages in the amount of \$122,341.00;
- B. Punitive damages as authorized by *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995) and the [FINRA] Arbitrator's Manual;
- C. Interest at 5%, attorneys' fees, and costs, pursuant to Wis. Stat. § 551.59; and
- D. Such other and further relief as this Panel deems just and proper.

In the Statement of Answer, as amended, Ausdal requested the Panel dismiss all of Claimants' claims, assess all filing fees and costs against Claimants, award Ausdal its attorneys' fees, and all other relief that the Panel deems just and proper.

In the Statement of Answer, Sentinus requested the Panel dismiss with prejudice all of Claimants' claims, recommend expungement, on behalf of Davenport of all references to this matter from Central Registration Depository ("CRD") registration records, assess all filings fees

and costs against Claimants, award Sentinus its attorneys' fees, and all other relief that the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

Ausdal and Sentinus did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim and appeared, are bound by the determination of the Panel on all issues submitted.

On September 18, 2020, Ausdal filed a Motion to Dismiss pursuant to Rule 12504 of the Code ("Motion to Dismiss"). On November 2, 2020, Claimants filed a Response to the Motion to Dismiss. On November 9, 2020, Ausdal filed a Reply in Support of the Motion to Dismiss.

On September 18, 2020, Ausdal filed a Motion to Decline to Use FINRA Forum. On September 28, 2020, Claimants filed an Opposition to the Motion to Decline to Use FINRA Forum. On October 5, 2020, Respondent Ausdal filed a Reply in Support of the Motion to Decline to Use FINRA Forum.

On November 24, 2020, the Panel heard oral arguments on Ausdal's Motion to Dismiss and Motion to Decline to Use FINRA Forum. In an Order dated December 9, 2020, the Panel granted Ausdal's Motion to Dismiss, with prejudice, as to any claim relating to LJMIX, and denied Ausdal's Motion to Decline to Use FINRA Forum, without prejudice.

On June 1, 2021, Ausdal filed a Motion for Leave to File Amended Statement of Answer, to which no response was filed. In an Order dated June 16, 2021, the Panel granted Ausdal's Motion for Leave to File Amended Statement of Answer.

On October 20, 2021, Claimant filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any remaining relief requests contained in the Statement of Claim.

On November 5, 2021, Davenport filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on December 13, 2021, so the parties could present oral argument and evidence on Davenport's request for expungement.

Neither Claimant nor Claimants' counsel participated in the expungement hearing. Counsel for Davenport also represented Respondents, who did not oppose the expungement request.

The Panel reviewed Davenport'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.

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 noted that the settlement was not conditioned on any party to the

settlement not opposing the request for expungement and that Davenport did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimony of Davenport; pre-hearing submissions from Davenport including extensive exhibits, including Barrett's account forms, private placement subscription documents including those containing Barrett's handwritten completion and signatures, and email communications with Barrett and his other investment advisor; history of the transactions involving Barrett and Davenport and lead role of the other investment advisor with whom Barrett had a 35-year relationship; history of the two investments at issue and their performance prior to Barrett's investment and Barrett's investment sophistication and investment objectives.

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 2082055) from registration records maintained by the CRD for Unnamed Party James Robert Davenport (CRD Number 5741283) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party James Robert Davenport 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, 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 determines that Barrett's allegation that Davenport recommended unsuitable investments is false. Barrett had a longstanding relationship with another Financial Advisor ("FA") and Davenport was merely taking a secondary position with Barrett pending the FA's later retirement. The other FA made the recommendations and provided the documents, discussion, and recommendations to Barrett. Davenport had a passive role, if any, in the identification, recommendation, and subsequent acquisition of the two investments to which Barrett later had objection. Davenport received no compensation as a result of Barrett's investments and did not contribute to the underlying settlement of the dispute with the two firms.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

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 = \$ 1,425.00

**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 parties, Ausdal and Sentinus are each assessed the following:

Member Surcharge = \$ 1,700.00
Member Process Fee = \$ 3,250.00

Late Pre-Hearing Cancellation Fees

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

September 2, 2021, cancellation requested by the parties = \$ 300.00

Total Late Pre-Hearing Cancellation Fees = \$ 300.00

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Panel has assessed \$75.00 of the late pre-hearing cancellation fees to Ausdal.

The Panel has assessed \$75.00 of the late pre-hearing cancellation fees to Sentinus.

Postponement Fees

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

September 28-October 1, 2021, postponement requested by the parties Waived

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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: October 27, 2020	1 session	
November 24, 2020	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: December 13, 2021	1 session	
<hr/> Total Hearing Session Fees	= \$	3,375.00

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$843.75 of the hearing session fees to Ausdal.

The Panel has assessed \$1,406.25 of the hearing session fees to Sentinus.

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

ARBITRATION PANEL

Tracy L. Allen	-	Public Arbitrator, Presiding Chairperson
Sally J. Wiggins	-	Public Arbitrator
Charles 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

Tracy L. Allen

Tracy L. Allen
Public Arbitrator, Presiding Chairperson

12/16/2021

Signature Date

Sally J. Wiggins

Sally J. Wiggins
Public Arbitrator

12/16/2021

Signature Date

Charles Kahn

Charles Kahn
Public Arbitrator

12/16/2021

Signature Date

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December 16, 2021

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