

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

The Evan Cole Revocable Trust UAD 11/15/07

Case Number: 20-02116

vs.

Respondents

First Republic Securities Company, LLC
First Republic Investment Management, Inc.

Hearing Site: Los Angeles, California

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 and Non-Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant The Evan Cole Revocable Trust UAD 11/15/07 (“Claimant”): Samuel B. Edwards, Esq., Shepherd, Smith, Edwards & Kantas, LLP, Houston, Texas.*

For Respondents First Republic Securities Company, LLC (“First Republic Securities”) and First Republic Investment Management, Inc., (“First Republic Investment”): Neal S. Robb, Esq., Keesal, Young & Logan, Long Beach, California.

Hereinafter, First Republic Securities and First Republic Investment are collectively referred to as “Respondents”.

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

CASE INFORMATION

Statement of Claim filed on or about: July 2, 2020.

First Amended Statement of Claim filed on or about: August 24, 2020.

Second Amended Statement of Claim filed on or about: September 30, 2020.

Claimant signed the Submission Agreement: September 26, 2020.

Statement of Answer to Claimant's Second Amended Statement of Claim filed by Respondents on or about: October 2, 2020.

Respondents signed the Submission Agreement: October 2, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action against First Republic Securities: breach of contract and warranties; promissory estoppel; violation of the California Securities Act; violation of the California Consumer Legal Remedies Act; violation of state fraud statutes; negligence and gross negligence; misrepresentation and negligent misrepresentation; breach of fiduciary duty; unjust enrichment; failure to supervise; damages; and vicarious liability.

In the First Amended Statement of Claim and Second Amended Statement of Claim, Claimant named First Republic Investment as an additional respondent.

The causes of action relate to Claimant's investments in unspecified securities held at First Republic Securities and managed by Respondents using the Harvest Volatility Management's Put Writing Strategy ("Harvest").

In the Statement of Answer to Claimant's Second Amended Statement of Claim, Respondents denied the allegations made in the Second Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, First Amended Statement of Claim and Second Amended Statement of Claim, Claimant requested:

1. An award be entered ordering Respondents to pay an amount between \$500,000.00 and \$1,000,000.00, including all direct and/or consequential damages and statutory and/or punitive damages; plus interest and costs as provided by statute, in an amount which Claimant reserves the right to amend at any time including hearings held on this matter, as follows:
 - a. all sums lost in Claimant accounts on any or all transactions made or not made; plus, additionally or alternatively,
 - b. all lost opportunities incurred as a result of acts and/or omissions, including the opportunity cost of Claimant being forced to liquidate investments; plus, additionally or alternatively,
 - c. consequential damages, including the tax consequences of Respondents' actions;
 - d. statutory damages as provided by applicable law; plus, additionally or alternatively,
 - e. punitive damages in an amount that the Panel shall deem appropriate; plus,
 - f. pre-award and pre-judgment interest at the highest rate allowed by law; plus, additionally or alternatively,
 - g. all costs of these proceedings and for recovery of damages incurred including legal fees, including while on appeal, if any, and for collection; plus, additionally or alternatively,
 - h. any and all other relief available to Claimant, in law or equity or otherwise, which

may be granted to them by this Panel.

In the Statement of Answer to Claimant's Second Amended Statement of Claim, Respondents requested:

1. An award finding that Claimant is not entitled to recover damages from Respondents and dismissing Claimant's claims in their entirety, with prejudice;
2. Costs and an assessment of the Panel's fees and expenses to Claimant;
3. Expungement of Occurrence Numbers 2083209 and 2083236 from the Central Registration Depository ("CRD") records of Unnamed Party Matthew Donald Babrick ("Babrick") and Unnamed Party James Wightman Wilcox ("Wilcox"), respectively; and
4. Such other 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.

On October 19, 2021, Claimant filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to the claims against Respondents.

On November 10, 2021, Respondents filed a Motion for Expungement on behalf of Unnamed Party Babrick and Unnamed Party Wilcox, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on December 8, 2021, so the parties could present oral argument and evidence on Unnamed Party Babrick's and Unnamed Party Wilcox's requests for expungement.

Claimant did not participate in the expungement hearing.

The Panel reviewed Unnamed Party Babrick's and Unnamed Party Wilcox's BrokerCheck® Reports. 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 Unnamed Party Babrick and Unnamed Party Wilcox did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: a review of the initial claim and subsequent iterations of that claim; a review of all responses to those claims and related exhibits; Respondents' pre-hearing motion and expungement brief dated November 10, 2021; Unnamed Party Babrick's BrokerCheck® Report; Unnamed Party Wilcox's BrokerCheck® Report; the settlement agreement; letter dated December 6, 2021 to FINRA which includes emails regarding the liquidation of Claimant's Harvest account; and the testimony of Unnamed Party Babrick and Unnamed Party Wilcox.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2083209) from registration records maintained by the CRD for Unnamed Party Matthew Donald Babrick (CRD Number 4433983) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Matthew Donald Babrick must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel also recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2083236) from registration records maintained by the CRD for Unnamed Party James Wightman Wilcox (CRD Number 4261884) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party James Wightman Wilcox 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:

Unnamed Party Babrick and Unnamed Party Wilcox jointly moved for expungement of all references from their records by the CRD.

After due consideration of the pleadings, exhibits (including BrokerCheck Reports for Unnamed Party Babrick and Unnamed Party Wilcox, plus the settlement agreement associated with this case), the testimony offered by Respondents, Unnamed Party Babrick and Unnamed Party Wilcox, the Panel unanimously recommends the expungement of all references to this arbitration from Unnamed Party Babrick’s and Unnamed Party Wilcox’s CRD records.

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

The original Statement of Claim and the iterations that followed listed a litany of causes of this action involving Unnamed Party Babrick and Unnamed Party Wilcox. The Panel dismissed the majority of those causes and focused on whether or not Claimant’s investment in Harvest was suitable for him, and whether or not Unnamed Party Babrick and Unnamed Party Wilcox thereafter properly managed his investment in Harvest, including how responsive they were to Claimant’s direction to liquidate the account in a timely fashion.

Claimant was a high value client at the time of this claim with a net worth of approximately \$100 million dollars. He had significant real estate and financial holdings, irrespective of this claim. To date, Claimant is still a client with Respondents.

Regarding Claimant's suitability for this investment, the Panel, through a review of the pleadings, exhibits and testimony offered by Unnamed Party Babrick and Unnamed Party Wilcox, determined that Claimant had considerable options trading experience prior to his investment in Harvest. Additionally, the evidence revealed that Claimant received and signed detailed documents describing the risks/rewards associated with this kind of investment. During the signing of these documents, Claimant indicated that his investment objective was "speculation", an objective that generally indicates an assumption of greater risk. Unnamed Party Babrick and Unnamed Party Wilcox also advised Claimant that this investment was best employed for a full market cycle, or generally a period of five to seven years. In short, Claimant was experienced regarding the rewards and consequences associated with options trading, and well-informed both in writing and verbally, regarding the suitability of this kind of investment for his overall financial portfolio.

Claimant's initial investment in Harvest was with a \$2 million dollar mandate which he later increased to \$5 million dollars.

Towards the end of 2019 and early 2020, market volatility increased dramatically, largely due to the COVID-19 pandemic. That unpredictable volatility and market downturn resulted in significant losses in Claimant's Harvest account. This, through no fault of Unnamed Party Babrick and Unnamed Party Wilcox. Claimant alleged that he told Unnamed Party Babrick and Unnamed Party Wilcox to liquidate his Harvest account in mid to late February. Exhibits provided by Unnamed Party Babrick and Unnamed Party Wilcox indicated that this did not occur until late March, whereupon over their objections, Unnamed Party Babrick and Unnamed Party Wilcox acceded to Claimant's request. The result of Claimant's decision to liquidate early in the market cycle resulted in a loss of more than \$800,000.00.

It was clear to Unnamed Party Babrick and Unnamed Party Wilcox that Claimant was receiving financial advice from a variety of third parties, including his CPA. This advice was contrary to what later turned out to be the sound advice provided by Unnamed Party Babrick and Unnamed Party Wilcox to stay the course. Had Claimant remained in the Harvest investment his losses would have largely been eliminated by the end of 2020, or approximately midway through the market cycle. And, the investment would have gone on to earn sizable monetary returns.

Unnamed Party Babrick and Unnamed Party Wilcox have each been involved as wealth managers for 20 years or more. They have one additional, yet unresolved complaint on their CRD records; a complaint which they plan to vigorously defend. The Harvest investment strategy still exists and Unnamed Party Babrick and Unnamed Party Wilcox currently serve several clients with approximately \$400 million dollars invested in that strategy. Overall, Unnamed Party Babrick and Unnamed Party Wilcox have a client list of 75 families involving total investments of approximately \$5 billion dollars.

During the course of this case, Claimant was the subject of a motion to show cause why he should not be subject to sanctions for failure to cooperate satisfactorily during the discovery process. The case settled prior to the resolution of that motion.

2. 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, 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, First Republic Securities is assessed the following:

Member Surcharge = \$ 2,475.00

Member Process Fee = \$ 5,075.00

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

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 jointly and severally to Respondents.

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 the Panel @ \$1,300.00/session = \$ 2,600.00

Pre-Hearing Conferences: December 4, 2020 1 session

November 10, 2021 1 session

One (1) hearing session on expungement request @ \$1,300.00/session	= \$	1,300.00
Hearing: December 8, 2021 1 session		
<hr/>		
Total Hearing Session Fees	= \$	3,900.00

The Panel has assessed \$1,300.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,600.00 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Robert B. Hansohn	-	Public Arbitrator, Presiding Chairperson
Ronald L. Cameron	-	Public Arbitrator
Richard M. Norman	-	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

Robert B. Hansohn

Robert B. Hansohn
Public Arbitrator, Presiding Chairperson

12/16/2021

Signature Date

Ronald L. Cameron

Ronald L. Cameron
Public Arbitrator

12/17/2021

Signature Date

Richard M. Norman

Richard M. Norman
Public Arbitrator

12/16/2021

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.

December 17, 2021

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