

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

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In the Matter of the Arbitration Between:

Claimant  
Branna Rose

Case Number: 20-02143

vs.

Respondents  
HCR Wealth Advisors  
Gregory Sandor Heller  
Heller Capital Resources  
Steven Jeff Weinberger

Hearing Site: Los Angeles, 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. Associated Persons and Non-Members

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Branna Rose (“Claimant”): Marc I. Zussman, Esq., Law Offices of Marc I. Zussman, Los Angeles, California.\*

For Respondents HCR Wealth Advisors (“HCR Wealth Advisors”), Gregory Sandor Heller (“Heller”), Heller Capital Resources (“Heller Capital Resources”), and Steven Jeff Weinberger (“Weinberger”): Esther E. Cho, Esq. and Bryce Cullinane, Esq., Keesal, Young & Logan, Long Beach, California.

Hereinafter, HCR Wealth Advisors, Heller, Heller Capital Resources and Weinberger 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 6, 2020.

Claimant signed the Submission Agreement: June 26, 2020.

Statement of Answer filed by Respondents on or about: September 18, 2020.  
Respondents signed the Submission Agreement: September 15, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action against Respondents: breach of fiduciary duty; fraud by misrepresentation and omission; and violations of federal and state securities laws and statutory and common Law, NASD rules of fair practice, and the Investment Advisor's Act of 1940. Claimant also asserted a cause of action for breach of written contract against HCR Wealth Advisors and Heller Capital Resources, and a cause of action for failure to supervise and control against HCR Wealth Advisors, Heller Capital Resources, and Heller. The causes of action relate to Schwab One account, IRA rollover account and Roth IRA account, which included investments in Guggenheim Macro Opportunity Fund, First Eagle Global Fund, Payden Emerging Markets, Catalyst Hedged Futures Fund, J.P. Morgan Exchange Traded Notes, and Vanguard Hi Yield.

In the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Compensatory damages in an amount according to proof but not less than \$315,934.18;
2. Disgorgement of fees, commissions and other remuneration paid to Respondents according to proof;
3. Lost opportunity costs;
4. Consequential damages, including taxes paid on capital gains, and failure to obtain long-term care insurance coverage;
5. Attorneys' fees and costs;
6. Pre and post judgment interest at the legal rate;
7. Punitive damages; and
8. Such other and further relief as this Panel may deem just and proper.

In the Statement of Answer, Respondents requested:

1. Claimant take nothing by her claim and that this matter be dismissed in its entirety with prejudice;
2. Costs; and
3. Other such 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 June 11, 2021, Heller filed a Motion for Expungement, to which no response was filed.

On September 14, 2021, Claimant filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Panel conducted a recorded, telephonic hearing on November 1, 2021, so the parties could present oral argument and evidence on Heller's request for expungement.

Claimant did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed Heller's BrokerCheck® Report.

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 Heller did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimant's Statement of Claim with exhibits; Respondents' Answer to the Statement of Claim; Respondents' notice re designation of Heller Capital Resources, dated February 15, 2021; Heller's application for expungement; Heller's BrokerCheck® Report; Claimant's notice of final settlement; Respondents' notice of service and non-opposition; and Heller's witness list.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2084178) from registration records maintained by the CRD for Respondent Gregory Sandor Heller (CRD Number 1460520) with the understanding that, pursuant to Notice to Members 04-16, Respondent Gregory Sandor Heller 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 findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The claim, allegation, or information is false.

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

Heller has worked in the financial services industry for 32 years. He became an Investment Advisor in 1989 and a Certified Financial Planner in 1994. He is the founder and CEO of HCR Wealth Advisors. At the time of the alleged events between 2004 and 2016, Heller was the CEO of HCR Wealth Advisors. Claimant was never Heller's client.

Claimant's counsel confirmed that Claimant received a copy of the underlying Statement of Claim and Notice of Expungement along with the notice of the expungement hearing from Heller's counsel on September 28, 2021 and confirmed that Claimant would neither participate in the expungement hearing nor oppose said expungement.

In Heller's words, as the founder and CEO of HCR Wealth Advisors, it was his practice to sign all advisor agreements (new account forms). Other than that, he does not recall ever meeting with Claimant personally, nor did he have any relationship with her nor supervisory responsibilities over her accounts. Heller never met, spoke to, or had any communication or business with Claimant. Weinberger was Claimant's Investment Advisor and exclusively and entirely managed her accounts during the time period at issue.

The case was settled by way of the "Release and Settlement Agreement" dated May 10, 2021. Heller did not personally contribute to the settlement.

Heller has worked in the financial services industry for 32 years and only has two other customer complaints that stemmed from the unavoidable 2008/2009 financial crisis on his record.

For these reasons, the Panel recommends expungement pursuant to FINRA Rules 2080(b)(1)(A), as the claim, allegation, or information is factually impossible or clearly erroneous; 2080(b)(1)(B), as the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and 2080(b)(1)(C), as the claim, allegation, or information is false.

Additionally, Claimant's complaint holds no meaningful regulatory or investor protection value. Its expungement would have no material adverse effect on investor protection, the integrity of the CRD system, or regulatory requirements. This occurrence has actually harmed Heller because he has been required to disclose publicly, so its expungement will accurately represent his record.

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 = \$ 1,425.00

*\*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 Heller and Weinberger's current firm, Investment Security Corporation is assessed the following:

Member Surcharge = \$ 1,900.00

Member Process Fee = \$ 3,750.00

### **Postponement Fees**

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

July 12-15, 2021, postponement requested by parties = WAIVED

November 1-4, 2021, postponement requested by 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 Arbitrators, including a pre-hearing conference with the Arbitrators, 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 23, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00  
Hearing: November 1, 2021 1 session

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Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees to Claimant.

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

The Panel has assessed \$1,125.00 of the hearing session fees to Heller.

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

**ARBITRATION PANEL**

Constance Ellen Boukidis	-	Public Arbitrator, Presiding Chairperson
Joseph Alfred Davis	-	Public Arbitrator
Marc David Wilde	-	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**

***Constance Ellen Boukidis***

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Constance Ellen Boukidis  
Public Arbitrator, Presiding Chairperson

**11/11/2021**

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Signature Date

***Joseph Alfred Davis***

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Joseph Alfred Davis  
Public Arbitrator

**11/11/2021**

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

***Marc David Wilde***

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Marc David Wilde  
Public Arbitrator

**11/11/2021**

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

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November 11, 2021

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