

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Janet Buggeln
Janet Florence Buggeln Living Trust u/a/d 5/12/17

Case Number: 20-02239

vs.

Respondent

Geneos Wealth Management, Inc.

Hearing Site: Phoenix, Arizona

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.

REPRESENTATION OF PARTIES

For Claimants Janet Buggeln and Janet Florence Buggeln Living Trust u/a/d 5/12/17 (“Claimants”): Jonathan Kurta, Esq., Fitapelli Kurta, New York, New York.*

For Respondent Geneos Wealth Management, Inc. (“Respondent”): Victoria H. Buter, Esq., Kutak Rock LLP, Omaha, Nebraska.

*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 16, 2020.
Claimants signed the Submission Agreement: July 16, 2020.

Statement of Answer filed on or about: September 21, 2020.
Respondent signed the Submission Agreement: September 17, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: unsuitability, common law fraud, breach of contract, negligent supervision, breach of fiduciary duty, negligence, violation of the Arizona Consumer Fraud Act, and violation of the Arizona Securities Act. The causes of action relate to LJM Preservation and Growth Fund, Catalyst MLP and Infrastructure Fund, and the Toewes Tactical Income Fund.

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:

1. Compensatory damages in the amount to be determined at the hearing;
2. Pre-judgment interest;
3. Attorneys' fees pursuant to the Arizona Securities Act;
4. Costs;
5. Filing and forum fees; and
6. Such other and further relief which the Panel deems just and proper.

In the Statement of Answer, Respondent requested:

1. Dismissal of Claimants' claims against Respondent with prejudice;
2. Costs and expenses incurred in defending this action, including reasonable attorneys' fees;
3. Such other relief as the Panel deems appropriate; and
4. Expungement of any reference to Claimants' Statement of Claim from the Central Registration Depository ("CRD") records of Michael John Osland.

Respondent filed a request for expungement, on behalf of Unnamed Party Michael John Osland, 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.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 4, 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 February 19, 2021, Respondent filed a motion for expungement on behalf of Unnamed Party Michael John Osland ("Osland"), to which no response was filed. In the motion, Respondent requested for expungement of Occurrence Number 2083377 from Osland's CRD records.

The Panel conducted a recorded, telephonic hearing on April 20, 2021, so the parties could present oral argument and evidence on Osland's request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Osland'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. The Panel noted from Osland's testimony that Osland was required to contribute his insurance deductible by his errors and omissions insurance carrier for the settlement. Expungement is still warranted as Osland's contribution to the settlement amount was made out of his errors and omissions insurance and the contribution to the settlement was to avoid the cost of continued litigation.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Osland's BrokerCheck® Report; and the settlement agreement.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the expungement 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 2083377) from registration records maintained by the CRD for Unnamed Party Michael John Osland (CRD Number 1791642) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Michael John Osland 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 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:

The claims made dealt primarily with three mutual funds recommended by Osland to Claimants. Assertions were made that the mutual funds were unsuitable for Claimants; Respondent and Osland's purported misrepresentation; and Respondent failed to supervise Osland's activities. Two of the subject mutual funds appeared to be performing

assets that were appropriate. One mutual fund, LJM Preservation and Growth Fund, had a unique investment strategy that was not necessarily tied to the performance of the stock market. At the time Osland presented it to Claimants, it had a solid track record of more than 10 years. Osland went so far as to directly contacting the management of LJM Preservation and Growth Fund to discuss its investment approach and program. He felt comfortable enough with the LJM Preservation and Growth Fund that he invested in it himself. According to his testimony, Osland discussed all of the investments that Claimants made with Claimants to make sure the potential risks were understood. In the account application, Claimants stated that the risk tolerance was moderately high. The LJM Preservation and Growth Fund failed in a volatile market swing that could not have been reasonably foreseen. The underlying claim was settled and Osland did contribute – albeit with insurance coverage. The settlement agreement did not admit liability. Under these circumstances, the Panel finds that expungement is appropriate.

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 that employed the associated person at the time of the event 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 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 5, 2020 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00
Hearing: April 20, 2021 1 session

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 \$562.50 of the hearing session fees to Respondent.

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

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

ARBITRATION PANEL

Richard Kent Mahrle	-	Public Arbitrator, Presiding Chairperson
George W. Harding	-	Public Arbitrator
Aryka Steele Radke	-	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

Richard Kent Mahrle

Richard Kent Mahrle
Public Arbitrator, Presiding Chairperson

05/11/2021

Signature Date

George W. Harding

George W. Harding
Public Arbitrator

05/11/2021

Signature Date

Aryka Steele Radke

Aryka Steele Radke
Public Arbitrator

05/11/2021

Signature Date

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May 12, 2021

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