

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

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In the Matter of the Arbitration Between:

Claimant  
Catherine G. Ward

Case Number: 20-02839

vs.

Respondents  
Hilltop Securities Inc.  
Michael Steven Bahary  
Alicia Renee Kitz

Hearing Site: San Diego, 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. Member and Associated Persons

This matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure (“Code”).

**REPRESENTATION OF PARTIES**

Claimant Catherine G. Ward (“Claimant”) appeared pro se.

For Respondents Hilltop Securities Inc. (“Hilltop”), Michael Steven Bahary (“Bahary”), and Alicia Renee Kitz (“Kitz”): Edward S. Zusman, Esq., Markun Zusman Freniere & Compton LLP, San Francisco, California.

Hereinafter, Hilltop, Bahary, and Kitz will collectively be referred to as “Respondents”.

**CASE INFORMATION**

Statement of Claim filed on or about: September 23, 2020.  
Claimant signed the Submission Agreement: September 8, 2020.

Statement of Answer filed on or about: November 12, 2020.  
Respondents signed the Submission Agreement: November 12, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; churning; fraud; manipulation; misrepresentation; breach of contract; errors; failure to

supervise; and negligence. The causes of action relate to alleged mishandling of the monetary disbursement of the Reed Family Trust.

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 compensatory damages in the amount of \$25,000.00.

In the Statement of Answer, Respondents requested:

1. Claim be dismissed in its entirety;
2. Claimant take nothing by way of her claim;
3. Respondents be awarded costs and forum fees incurred in this action; and
4. Such other and further relief as the Arbitrator deems just and proper.

Bahary filed a request for expungement of all references to this matter from his Central Registration Depository ("CRD") records. Please see the Other Issues Considered and Decided section of this Award for more information.

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

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On February 24, 2021, Bahary filed a Motion for Expungement, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on April 7, 2021, so the parties could present oral argument and evidence on Bahary's request for expungement.

Claimant did not participate in the expungement hearing.

The Arbitrator reviewed Bahary's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Arbitrator noted that the dispute was not settled and, therefore, there was no settlement document to review.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Claimant's Statement of Claim; Respondent's Statement of Answer; Bahary's BrokerCheck® Report; and testimony provided at the expungement hearing.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. FINRA Dispute Resolution Services shall retain the \$425.00 filing fee that Claimant deposited previously.
3. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2099334) from registration records maintained by the CRD for Respondent Michael Steven Bahary (CRD Number 717925) with the understanding that, pursuant to Notice to Members 04-16, Respondent Michael Steven Bahary 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 Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Based on the pleadings and testimony provided, the Arbitrator agrees that the claims made against Bahary in this case are both false and clearly erroneous. Bahary was asked by Claimant, along with her two siblings, to liquidate the assets of Claimant's deceased mother and divide those assets equally among the three children. The liquidation of the assets was handled properly by Bahary and the distribution was executed accordingly. Claimant was more concerned about her brother having authority to make all of the financial decisions regarding the mother's assets. This was fully documented that the brother had been appointed by his mother to make the decisions regarding the assets. This issue has no bearing on Bahary's handling of the mother's assets and should have been settled, if needed, by the three children. Claimant did not suffer at all in the distribution of the assets. Based on these points, Bahary's record should be expunged.

4. Any and all claims for relief not specifically addressed herein are denied.

### **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	= \$	425.00
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*\*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, Hilltop is assessed the following:

Member Surcharge	= \$	450.00
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**Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing: April 7, 2021 1 session		

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Total Hearing Session Fees	= \$	450.00
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The Arbitrator has assessed the total hearing session fees to Bahary.

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

**ARBITRATOR**

Herbert Liberman

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Sole 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.

**Arbitrator's Signature**

***Herbert Liberman***

Herbert Liberman  
Sole Public Arbitrator

**04/19/2021**

Signature Date

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April 20, 2021

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