

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Lee Scott Rawiszer
Paul Robert Volpe

Case Number: 20-02924

vs.

Respondent

Kestra Investment Services, LLC

Hearing Site: New York, New York

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: Associated Persons vs. Member

This case was administered under the Special Proceeding option for simplified cases.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Lee Scott Rawiszer (“Rawiszer”) and Paul Robert Volpe (“Volpe”): Richard A. D’Amura, Esq., D’Amura & Zaidman, PLLC, Austin, Texas.

For Respondent Kestra Investment Services, LLC: Shawn Shook, Esq., Kestra Financial, Austin, Texas.

CASE INFORMATION

Amended Statement of Claimant filed on or about: September 2, 2020.

Lee Rawiszer signed the Submission Agreement: September 1, 2020.

Paul Volpe signed the Submission Agreement: September 1, 2020.

Statement of Answer filed by Respondent on or about: October 22, 2020.

Kestra Investment Services, LLC signed the Submission Agreement: October 22, 2020.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimants asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant's expungement request.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimants requested: expungement of Occurrence Numbers 1502768, 1560745, 1616672, 1674589, 1677062, 1677063, 1704548, 1707222, 1502767, 1694719; and compensatory damages in the amount of \$2.00 for each Claimant from Respondent.

In the Statement of Answer, Respondent requested that the Panel award no damages and assess all forum fees to the Claimants.

At the hearing, Claimants withdrew the request for \$1.00 each in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

Claimant filed a Statement of Claim on September 1, 2020. and an Amended Statement of Claim on September 2, 2020. The original Statement of Claim filed on September 1, 2020. was not served on the Respondent and therefore not considered by the arbitrator.

On January 5, 2021 and February 1, 2021, Claimants advised that the customers in Occurrence Numbers 1502768, 1560745, 1616672, 1674589, 1677062, 1677063, 1704548, 1707222, 1502767 and 1694719 ("customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded hearing by videoconference on March 5, 2021, so the parties could present oral argument and evidence on Claimants request for expungement.

Respondent participated in the expungement hearing did not oppose the request for expungement.

The customers in Occurrence Numbers 1502768, 1560745, 1616672, 1674589, 1677062, 1677063, 1704548, 1707222, 1502767 and 1694719 did not participate in the expungement hearing. The Arbitrator found that the customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimants BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1616672, 1674589, 1677062, 1677063, 1704548, 1707222 and 1694719, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlements were not conditioned on any party to the settlements not opposing the expungement request and that Claimants did not contribute to the settlement amounts.

The Arbitrator also reviewed the settlement documentation related to Occurrence Numbers 1502767 and 1502768, considered the amount of payment made to any party to the settlements, and considered other relevant terms and conditions of the settlements. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator noted that although Claimants contributed to the settlement, the amount paid was to avoid the cost and risk of defense. Expungement is still warranted as Claimants' contributions were made as required by the terms and conditions of their Errors and Omissions (E&O) insurance policies.

The Arbitrator also reviewed the settlement documentation related to Occurrence Number 1560745, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the expungement request. The Arbitrator noted that although Claimant Rawiszer contributed to the settlement, the amount paid was a minor portion of the overall loss and reflected the cost and risk of defense. Expungement is still warranted as Claimant Rawiszer's contribution was made as required by the terms and conditions of his E&O insurance policy.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings; Claimants' testimonies; Claimants' BrokerCheck® Reports; and exhibits.

ARBITRATOR'S EXPLANATION OF DECISION

Each of the designated Occurrences below stems from the customers' investments in the Hennessey Financial Monthly Income Fund, LP ("Hennessey"), a real estate asset-based income fund. At the time of their investments, the Fund was offering an annualized return of 12% which had been paid consistently for a number of years from Mezzanine financing provided by the company for real estate acquisition and development. During 2007 and 2008, however, the global financial crisis caused severe distress in the real estate markets which in turn adversely affected real estate values and the securities tied to those markets. Hennessey's 12% yield was reduced in stages to the point where the Fund ceased paying any interest and became insolvent.

In 2010, the SEC filed a complaint against the Fund and some of its principals, alleging securities fraud in connection with the offering and sale of interests in the Fund. The SEC's investigation revealed that defendants had made materially false and misleading statements that effectively hid the Fund's true and deteriorating financial position to investors and to broker dealers such as NFP. Rawiszer and Volpe in turn relied upon NFP's due diligence investigation in placing the security on NFP's approved platform before making purchase recommendations of the Fund to their clients.

As will be seen below, those recommendations at the time made were suitable for their clients given their interest, risk profiles and tolerances. Since the four-year holding period made the Fund essentially illiquid, their clients were unable to mitigate their losses in a timely manner. In fact, against Rawiszer's and Volpe's advice, several clients found the purported yield on Hennessey paper to be so sedulously compelling that they made additional purchases of Hennessey notes after the market break. Additionally, in each instance their customers received all requisite disclosures and executed the necessary purchase documentation acknowledging

same.

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. The Arbitrator recommends the expungement of all references to Occurrence Number 1616672 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Arbitrator recommends the expungement of all references to Occurrence Number 1694719 from registration records maintained by the CRD for Claimant Paul Robert Volpe (CRD Number 2575508) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Robert Volpe 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 13805 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:

The customer became a client in 2005. The customer was an experienced real estate investor and property manager with a net worth of \$2.6 million, the customer was interested in the yield offered by the Fund and eventually invested \$185,000.00. The investment was suitable when made and accorded with the customer’s risk tolerance and objectives. Claimants were not involved in any sale practice or other violation. The FINRA arbitration case against Rawiszer and Volpe was settled to avoid the cost of defense.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1704548 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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Pursuant to Rule 13805 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:

The customer was a sophisticated high net worth investor with 20 plus years’ experience seeking income and growth with moderate risk. After discussing the Fund with Rawiszer including its business model and risks, she invested \$50,000.00. This was the only trade made in her account. Despite Rawiszer’s advice, she subsequently invested another \$30,000.00 in a Hennessy preferred issue. The investment in the Fund was suitable when made and accorded with the customer’s risk tolerance and objectives. Respondent settled with the customer in order to avoid the cost of defense.

3. The Arbitrator recommends the expungement of all references to Occurrence Number 1707222 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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Pursuant to Rule 13805 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:

The customer was a former New York real estate broker and investor with a net worth of \$15 Million. Rawiszer recommended the Fund to her for its high monthly income and as part of a 1031 exchange. The customer eventually invested some \$425,000.00. The investment in the Fund was suitable when made and accorded with customer’s risk tolerance and objectives. Claimant was not involved with any sales practice or other violations. Respondent settled the arbitration case with the customer to in order to avoid the cost of defense.

4. The Arbitrator recommends the expungement of all references to Occurrence Number 1560745 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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Pursuant to Rule 13805 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:

The customers were sophisticated investors seeking long term income with moderate risk. After discussing their portfolio and interest, Claimant recommended a \$50,000.00 investment in Hennessey. They were so attracted to the high yield offered that they actually invested six times that amount in the product. The investment in the Fund was suitable when made and accorded with their risk tolerance and objectives. Rawiszer was not involved in any sales practice or other violations. Respondent settled the FINRA arbitration to avoid the risk and cost of defense. Rawiszer contributed to the settlement as required by the terms and conditions of his E&O insurance policy.

5. The Arbitrator recommends the expungement of all references to Occurrence Number 1502768 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Arbitrator recommends the expungement of all references to Occurrence Number 1502767 from registration records maintained by the CRD for Claimant Paul Robert Volpe (CRD Number 2575508) with the understanding that, pursuant to Notice to Members 04-16, Claimant Paul Robert Volpe 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 13805 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:

The customer was a sophisticated and experienced investor looking to generate substantial current income. After reviewing her well-diversified portfolio, Rawiszer and Volpe recommended, and she purchased, \$390,000 of the Fund. She subsequently recommended the fund to another family member, who, after discussing his options with

Rawiszer, invested \$100,000 and not the \$50,000 amount discussed with Rawiszer. He subsequently made substantial additional purchases of the Fund against the recommendation of Rawiszer who was concerned over a lack of diversification and liquidity in the account. Respondent settled the claim to avoid the cost and risk of litigation. Both Rawiszer and Volpe contributed to the settlement as required by the terms and conditions of their E&O insurance policies.

6. The Arbitrator recommends the expungement of all references to Occurrence Number 1677062 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer 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 13805 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:

The customer had a moderate risk profile coupled with a desire to generate long term current income. On Rawiszer’s recommendation he eventually purchased \$200,000 of the Fund. The customer’s investment in the Fund was suitable when made and accorded with his risk tolerance and objectives. Rawiszer was not involved with any sales practice or other violations. The FINRA arbitration claim was settled to avoid the risk and cost of defense. Rawiszer did not contribute to the settlement.

7. The Arbitrator recommends the expungement of all references to Occurrence Number 1674589 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer 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 13805 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:

The customer was an experienced high net worth investor with substantial equity exposure. As part of a diversification strategy, Rawiszer recommended, and the customer purchased, \$160,000 of the Fund. The customer's investment in the Fund was suitable when made and accorded with his risk tolerance and objectives. Claimant was not involved with any sales practice or other violations. Respondent settled the claim with the customer to avoid the risk and cost of defense. Rawiszer did not contribute to the settlement.

8. The Arbitrator recommends the expungement of all references to Occurrence Number 1677063 from registration records maintained by the CRD for Claimant Lee Scott Rawiszer (CRD Number 1248193) with the understanding that, pursuant to Notice to Members 04-16, Claimant Lee Scott Rawiszer 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 13805 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:

The customer was an experienced investor who owned income producing real estate and was interested in generating more current income. In 2007, Volpe, not Rawiszer, who he did not meet until sometime later, recommended a diversified portfolio of assets including the Fund. After extensive consideration, the customer invested \$100,000. The customer's investment in the Fund was suitable when made and accorded with his risk tolerance and objectives. Rawiszer was not involved with any sales practice or other violations. Respondent settled the arbitration claim with the customer to avoid the risk and cost of defense. Rawiszer did not contribute to the settlement.

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	= \$ 50.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Kestra Investment Services, LLC is assessed the following:

Member Surcharge =\$ 150.00

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) pre-hearing session with a single Arbitrator @ \$50.00/session =\$ 50.00
Pre-Hearing Conference: December 18, 2020 1 session

Two (2) hearing sessions on expungement request @ \$50.00/session =\$ 100.00
Hearing: March 5, 2021 1 session

Total Hearing Session Fees =\$ 150.00

The Arbitrator has assessed the total hearing session fees to Claimants jointly and severally.

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

ARBITRATOR

Robert E. Anderson

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Arbitrator's Signature

Robert E. Anderson

Robert E. Anderson
Sole Public Arbitrator

04/12/2021

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.

April 12, 2021

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