

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Lars Jensen

Case Number: 20-02970

vs.

Respondent
Stifel, Nicolaus & Company, Inc.

Hearing Site: New Orleans, Louisiana

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

This case was decided by an all-public panel.

The expungement hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Lars Jensen: Lance McCardle, Esq., Fishman Haygood, LLP, New Orleans, Louisiana.

For Respondent Stifel, Nicolaus & Co., Inc.: George C. Freeman III, Esq., Barrasso, Usdin, Kupperman, et al., New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed on or about: September 3, 2020.

Lars Jensen signed the Submission Agreement: September 3, 2020.

Statement of Answer filed by Respondent on or about: November 11, 2020.

Stifel, Nicolaus & Co., Inc. signed the Submission Agreement: September 9, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; misrepresentation and non-disclosure; negligence and gross negligence; breach of contract and warranties; violation of Louisiana Securities Laws; negligent failure to supervise; control person liability; and Respondeat Superior liability. The causes of action relate to Claimant's investments in master limited partnerships ("MLP") or in common stocks that function similarly to MLPs, with an emphasis on the energy sector.

Unless specifically admitted 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, Claimant requested: compensatory damages in an unspecified amount; attorneys' fees, costs and other expenses; exemplary, punitive, or treble damages and other penalties as allowed by law; interest, both pre-award and post-award; and for all other sums that Claimant is entitled to at law or equity.

In the Statement of Answer, Respondent requested: that Claimant's Statement of Claim be dismissed; that Claimant bear all costs and assessments by FINRA; that Respondent be awarded costs and expenses incurred in relation to these claims and this arbitration; for all other relief to which it may be entitled; and expungement of the claims from the Central Registration Depository ("CRD") records of Unnamed Parties Michael Barry ("Barry") and Charles Fenner ("Fenner").

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 30, 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.

On December 8, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Parties Barry and Fenner.

On December 9, 2021, Claimant advised that it does not intend to file a response to Respondent's Motion for Expungement but reserves the right to attend the expungement hearing.

The Panel conducted a recorded, video hearing on January 7, 2021, so the parties could present oral argument and evidence on Unnamed Parties Barry's and Fenner's requests for expungement.

Claimant's counsel participated in the expungement hearing and cross-examined Unnamed Parties Barry and Fenner.

The Panel reviewed Unnamed Parties Barry's and Fenner's BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences 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 Parties Barry and Fenner did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the uncontroverted testimony of Unnamed Parties Barry and Fenner with regard to

Unnamed Party Fenner's role concerning Claimant's account; Counsel for Claimant's cross-examination of Unnamed Parties Barry and Fenner; and the absence of questioning by Counsel for Claimant regarding Unnamed Party Fenner's testimony as to his role concerning Claimant's account.

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

AWARD

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

1. Unnamed Party Barry's request for expungement of the above-captioned arbitration (Occurrence Number 2088679) from registration records maintained by the CRD is denied.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2087291) from registration records maintained by the CRD for Unnamed Party Fenner (CRD Number 206237) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Fenner 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:

From the uncontroverted testimony the Panel found that Unnamed Party Fenner provided no financial advisory services to Claimant other than opening the account with securities Claimant received from the distribution of the corpus of a trust upon his mother's death. Unnamed Party Fenner had a relationship with Claimant's mother and opened the account with a good deal of reluctance. The account was serviced by Unnamed Party Barry during its existence, though it appears that both Unnamed Parties Barry and Fenner received a very small amount of commission revenue from the Claimant's account. The uncontroverted testimony was clear that the claims made were false with regard to Unnamed Party Fenner.

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(s) that employed the associated person(s) at the time of the event(s) 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

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena = \$ 200.00
with one Arbitrator @ \$200.00

Total Contested Motion for Issuance of Subpoena Fees = \$ 200.00

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Claimant.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Respondent.

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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session = \$ 450.00

Pre-Hearing Conference: November 29, 2021 1 session

= \$ 1,125.00

One (1) pre-hearing session with the Panel @ \$1,125.00/session

Pre-Hearing Conference: December 30, 2020 1 session

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

Hearing: January 7, 2022 1 session

Total Hearing Session Fees = \$ 2,700.00

The Panel has assessed \$787.50 of the hearing session fees to Claimant.

The Panel has assessed \$1,912.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Allan R. Lazor	-	Public Arbitrator, Presiding Chairperson
Devlan Wesley Melancon, Sr.	-	Public Arbitrator
Alan Lee Powell	-	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

Allan R. Lazor

Allan R. Lazor
Public Arbitrator, Presiding Chairperson

01/21/2022

Signature Date

Devlan Wesley Melancon, Sr.

Devlan Wesley Melancon, Sr.
Public Arbitrator

01/24/2022

Signature Date

Alan Lee Powell

Alan Lee Powell
Public Arbitrator

01/21/2022

Signature Date

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January 24, 2022

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