

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

James T. Alexander, Beneficial Owner
of Linda Alexander Decd. IRA

Case Number: 20-03078

vs.

Respondents

American Capital Partners, LLC,
Edward M. Cahill, Jr.,
Joseph J. DePasquale,
and Anthony M. Gardini, Jr.

Hearing Site: Louisville, Kentucky

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant James T. Alexander, Beneficial Owner of Linda Alexander Decd. IRA (“Claimant”): Steven M. McCauley, Esq., Law Offices of Steven M. McCauley, Lexington, Kentucky.*

For Respondents American Capital Partners, LLC (“American Capital”), Edward M. Cahill, Jr. (“Cahill”), Joseph J. DePasquale (“DePasquale”), and Anthony M. Gardini, Jr. (“Gardini”), hereinafter, collective referred to as “Respondents”: Michael H. Ference, Esq., Sichenzia Ross Ference LLP, New York, New York.

*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: September 9, 2020.

Claimant signed the Submission Agreement: September 4, 2020.

Statement of Answer filed by Respondents on or about: November 30, 2020.

Respondents signed the Submission Agreements: December 7, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: misrepresentation and omission of material facts, breach of fiduciary duty, common law fraud, common law negligence, unsuitable transactions, failure to supervise, and control person liability. The causes of action related to Claimant's allegation that Respondents recommended unsuitable, speculative investments in Sundial Growers, Inc., Medallion Bank of Salt Lake City, and Opko Health, Inc.

Unless specifically admitted 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 at least \$250,000.00 in compensatory damages, jointly and severally, against all Respondents; pre-judgment interest at the legal rate (8% per annum) from the dates of the purchases and sales through the date of Award, jointly and severally, from Respondents pursuant to KRS 292.480(1) and (2) and KRS 360.010; reasonable attorneys' fees, jointly and severally, from Respondents pursuant to KRS 292.480(1) and (2); costs, jointly and severally, from Respondents, including filing fees and expert witness fees pursuant to KRS 292.480(1) and (2); punitive damages, jointly and severally, against Respondents pursuant to KRS 411.184 and 411.186; post-judgment interest at the legal rate (12% per annum) pursuant to KRS 360.040 from the date of the Award until paid in full, jointly and severally, from Respondents; that all forum and session fees resulting from pre-hearing conferences and the final hearing be assessed against Respondents; and any other relief that may be appropriate and just.

In the Statement of Answer, Respondents requested dismissal of the Statement of Claim with prejudice and such other and further relief as deemed just, equitable, and proper.

Cahill and Gardini filed a request for expungement of all references to this matter from Central Registration Depository ("CRD") registration 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 May 27, 2021, Claimant filed a notice of dismissal for Cahill and Gardini ("First Notice of Dismissal"). Therefore, the Arbitrator made no determination with respect to any of the relief requests against Cahill and Gardini contained in the Statement of Claim.

On July 15, 2021, Cahill and Gardini filed an unopposed request for expungement and to proceed with the Chairperson as the sole arbitrator. In an Order dated July 23, 2021, the Panel granted Cahill and Gardini's request for the Chairperson to serve as the sole arbitrator.

On July 16, 2021, Claimant filed a notice of dismissal for American Capital and DePasquale. Therefore, the Arbitrator made no determination with respect to any of the relief requests for American Capital or DePasquale contained in the Statement of Claim.

The Arbitrator conducted a recorded hearing by videoconference on September 17, 2021, so the parties could present oral argument and evidence on Cahill and Gardini's request for expungement.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Arbitrator reviewed Cahill's and Gardini's BrokerCheck® Reports. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Arbitrator 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 Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that neither Cahill nor Gardini contributed to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: testimony of Cahill and Gardini, Claimant's New Account Form, Investment Switch Letter dated December 11, 2019 ("Investment Switch Letter"), and First Notice of Dismissal.

AWARD

After considering the pleadings, the testimony and evidence presented at the 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 the above-captioned arbitration (Occurrence Number 2140609) from registration records maintained by the CRD for Respondent Edward Michael Cahill, Jr. (CRD Number 2310758) and (Occurrence Number 2140623) from registration records maintained by the CRD for Respondent Anthony Michael Gardini, Jr. (CRD Number 1893107) with the understanding that, pursuant to Notice to Members 04-16, Respondents Edward Michael Cahill, Jr. and Anthony Michael Gardini, Jr. 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 finding of fact:

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

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

Neither Cahill nor Gardini was involved in the alleged investment-related sales practice violation. Cahill is Co-Founder and President of American Capital. American Capital has four offices and employs approximately one hundred individuals. Gardini is the founder and Chief Executive Officer of American Capital. Cahill's responsibilities are to grow the business, either organically or through external acquisitions, and maintain client relations. Gardini's responsibilities are to oversee the day-to-day business operations and growth of American Capital. Neither Cahill nor Gardini is involved in supervising individual consultants that are employed by American Capital. American Capital has supervisors who manage individual consultants. In the instant matter, the registered representative who allegedly violated sales practices is DePasquale. At the time of the alleged misconduct, DePasquale worked out of the Atlanta, Georgia office. Both Cahill and Gardini work out of the Hauppauge, NY office. DePasquale's supervisor is R.B., a managing director at American Capital, also based in Atlanta, GA. Claimant's New Account Form and the Investment Switch Letter only have the names and signatures of DePasquale and R.B. Gardini and Cahill had no knowledge of Claimant or Claimant's investment until the arbitration claim was made. Cahill and Gardini were not, in any way, involved directly or in a supervisory manner in the alleged sales practice violation. Due to the size of the organization, their roles in the organization, and the presence of a supervisor at the local office, Cahill's and Gardini's lack of involvement is appropriate. In addition, in May 2021, Claimant dismissed his claim against Cahill and Gardini. Cahill and Gardini were not parties to the settlement with Claimant.

2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble 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
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, American Capital is assessed the following:

Member Surcharge	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

December 28, 2020, cancellation requested jointly by the parties	= \$	300.00
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Total Late Pre-Hearing Cancellation Fees	= \$	300.00

The Arbitrator has assessed \$150.00 of the late pre-hearing cancellation fees to Claimant.

The Arbitrator has assessed \$150.00 of the late pre-hearing cancellation fees, jointly and severally, to Respondents.

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: September 17, 2021 1 session		
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Total Hearing Session Fees	= \$	450.00

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

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

ARBITRATOR

Frederick Ramos

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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

Frederick Ramos

Frederick Ramos
Sole Public Arbitrator

10/13/2021

Signature Date

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October 13, 2021

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