

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Leon Akins and Kay Akins

Case Number: 20-03424

vs.

Respondent

Vanguard Marketing Corporation

Hearing Site: Chicago, Illinois

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 Leon Akins (“L. Akins”) and Kay Akins, collectively, referred to as “Claimants”: Jason J. Kane, Esq., Peiffer Wolf Carr Kane & Conway, APLC, Pittsford, New York.*

For Respondent Vanguard Marketing Corporation (“Respondent”): Paula D. Shaffner, Esq., Stradley Ronon Stevens & Young LLP, Philadelphia, Pennsylvania.

*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: October 2, 2020.

Claimants signed the Submission Agreement: October 2, 2020.

Statement of Answer filed on or about: December 23, 2020.

Respondent signed the Submission Agreement: January 7, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violations of FINRA Rules 2110, 2111, and 3010; negligence; breach of fiduciary duty and respondeat superior. The causes of action related to Claimants’ allegations that Respondent, through its

registered representative, recommended unsuitable investments and misled them regarding the investment options they had available.

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, Claimants requested an award for all losses of principal; all interest, commissions, and fees paid by Claimants; the loss of income that would have been received had Claimants' accounts been managed properly, as well as other losses, foreseeable or not, that Claimants have suffered, including non-pecuniary losses; attorneys' fees, costs and other expenses; interest, both pre- and post-judgment; all other sums Claimants are entitled to at law or equity; and punitive damages.

In the Statement of Answer, Respondent requested expungement, on behalf of Unnamed Party David Bradley Adamson ("Adamson"), of all references to this matter from Central Registration Depository ("CRD") registration records; denial of Claimants' claims; attorneys' fees and costs; and any further relief that that Panel deems appropriate under the circumstances.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 22, 2021, Respondent filed a request for expungement on behalf of Adamson, to which no response was filed.

On October 15, 2021, Claimants filed a notice of voluntary settlement and dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Panel conducted a recorded, telephonic hearing on January 13, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Adamson.

Neither Claimants nor Claimants' counsel participated in the expungement hearing.

The Panel reviewed Adamson'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 and that Adamson did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Adamson's testimony and Respondent's Exhibits.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2093556) from registration records maintained by the CRD for Unnamed Party David Bradley Adamson (CRD Number 6199278) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party David Bradley Adamson 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 claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

The transcripts of recorded telephone conversations between L. Akins and Adamson and other representatives of Respondent and Adamson’s sworn testimony do not reflect that the investment recommendations were unsuitable. The conversations, especially the statements and remarks of L. Akins and those of Adamson, undercut the allegations in the complaint. The Panel noted that the investment recommendations met the Claimants’ objectives, which had been discussed prior to the recommendations being made.

2. Any and all claims for relief not specifically addressed herein, 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	= \$ 1,575.00
Expungement 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

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 the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: February 1, 2021 1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: January 13, 2022 1 session	
<hr/> Total Hearing Session Fees	<hr/> = \$ 2,250.00

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Robert S. Sugarman	-	Public Arbitrator, Presiding Chairperson
Elena P. Anastasiou	-	Public Arbitrator
Lisa Sandlow Imber	-	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

Robert S. Sugarman

Robert S. Sugarman
Public Arbitrator, Presiding Chairperson

02/01/2022

Signature Date

Elena P. Anastasiou

Elena P. Anastasiou
Public Arbitrator

02/01/2022

Signature Date

Lisa Sandlow Imber

Lisa Sandlow Imber
Public Arbitrator

02/01/2022

Signature Date

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February 01, 2022

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