

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Estate of Joel R. Barton, Jr., by and through
Joel R. Barton, III, Executor; Joel R. Barton III;
and Suzanne Fisk

vs.

Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
and Robert Henry Putz, Jr.

Case Number: 20-03445

Hearing Site: Houston, Texas

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 and Associated Person

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimants Estate of Joel R. Barton, Jr., by and through Joel R. Barton, III, Executor; Joel R. Barton III; and Suzanne Fisk (“Claimants”): William J. Garrison, Esq., Garrison PC, Dallas, Texas.*

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. (“Merrill Lynch”) and Robert Henry Putz, Jr. (“Putz”), collectively, “Respondents”: Logan S. Fisher, Esq., Bressler Amery & Ross, P.C., Florham Park, New Jersey.

*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 7, 2020.

Claimants signed the Submission Agreement: October 6, 2020.

Statement of Answer filed on or about: January 29, 2021.

Respondents signed the Submission Agreements: January 29, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, fraud by nondisclosure, and violation of the Texas Deceptive Trade Practices Act (“DTPA”). The causes of action related to Claimants’ allegation that Respondents willingly and covertly worked with third parties to undermine Claimants’ certain estate planning and economic interests.

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, Claimants requested a judgment against Respondents for all damages, including exemplary damages and treble damages under the DTPA; costs of arbitration, including reasonable and necessary attorneys’ fees; pre-judgment and post-judgment interest at the highest rate allowed by law; and such other and further relief, at law or in equity, to which Claimants may be justly entitled.

In the Statement of Answer, Respondents requested that the Panel dismiss Claimants’ claims in their entirety, assess all FINRA fees and costs to Claimants, and recommend expungement of all references to this matter from Putz’s registration records maintained by the Central Registration Depository (“CRD”).

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 28, 2021, Claimant filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 14, 2021, Putz filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on December 17, 2021, so the parties could present oral argument and evidence on Putz’s request for expungement.

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

The Panel reviewed Putz’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 Putz did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimants' Statement of Claim, the settlement agreement and release, Putz's BrokerCheck® Report, Joel R. Barton, Jr.'s Transfer on Death Agreements, and Putz's contemporaneous meeting notes.

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 2091927) from registration records maintained by the CRD for Respondent Robert Henry Putz (CRD Number 3138781) with the understanding that, pursuant to Notice to Members 04-16, Respondent Robert Henry Putz 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:

Based upon documentary evidence and exhibits presented in support of the expungement request, the Panel concludes that Putz did not assist, contribute to, or otherwise participate in drafting or executing the community property agreement which forms the basis of the underlying claim. The Panel further finds, contrary to the allegations of breach of fiduciary duty, negligence, and failure to disclose, that Putz took measures to ensure that the Joel R. Barton, Jr. was aware the effect of the community property agreement and that Claimants in the underlying complaint were also aware. Accordingly, the Panel concludes that the allegation is false within the meaning of FINRA Rule 2080(c).

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	= \$	1,575.00
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: January 25, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: December 17, 2021	1 session	
Total Hearing Session Fees	= \$	2,250.00

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

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

The Panel has assessed \$1,125.00 of the hearing session fees to Putz.

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

ARBITRATION PANEL

Daniel J. Pagnano	-	Public Arbitrator, Presiding Chairperson
Michael James Barton	-	Public Arbitrator
Jeffrey R. Pendergraft	-	Non-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

Daniel J. Pagnano

Daniel J. Pagnano
Public Arbitrator, Presiding Chairperson

12/21/2021

Signature Date

Michael James Barton

Michael James Barton
Public Arbitrator

12/22/2021

Signature Date

Jeffrey R. Pendergraft

Jeffrey R. Pendergraft
Non-Public Arbitrator

12/22/2021

Signature Date

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December 22, 2021

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