

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

David E. Hillin, on behalf of the
David E. Hillin IRA,
and David E. Hillin and
Denise R. Hillin, Trustees of the David
and Denise Hillin Trust

Case Number: 20-03501

vs.

Respondent

Geneos Wealth Management, Inc.

Hearing Site: Oklahoma City, Oklahoma

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.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants David E. Hillin, on behalf of the David E. Hillin IRA, and David E. Hillin and Denise R. Hillin, Trustees of the David and Denise Hillin Trust (“Claimants”): D. Daxton White, Esq., The White Law Group LLC, Chicago, Illinois.*

For Respondent Geneos Wealth Management, Inc. (“Respondent”): Victoria H. Buter, Esq., Kutak Rock, LLP, Omaha, Nebraska.

*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 13, 2020.

Claimants signed the Submission Agreement: October 12, 2020.

Statement of Answer filed on or about: December 10, 2020.

Respondent signed the Submission Agreement: December 10, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, common law fraud, negligence, and negligent failure to supervise. The causes of action relate to Claimants' allegations that contrary to their expressed investment objections, Respondent recklessly recommended unsuitable, speculative and high-commission alternative investments. The investments included Sierra Income Corporation, the business development company and GPB Holdings II, LP, a high-risk private placement.

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 compensatory damages of approximately \$100,000.01-\$500,000.00; interest and all of Claimants' costs, expenses, and disbursements associated with the filing of this claim, including expert witness fees; and such other and additional relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested that Claimants' claims be dismissed with prejudice; an award of costs and expenses, including reasonable attorneys' fees; expungement on behalf of Unnamed Party Charles Roy Bigbie, III ("Bigbie"), of all references to this matter from Central Registration Depository ("CRD") registration records; and such other relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 7, 2021, Claimant filed a notice of voluntary settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On October 25, 2021, Respondent filed a Petition for Expungement on behalf of Bigbie, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on January 4, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Bigbie.

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

The Panel reviewed Bigbie'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 Bigbie contributed to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Statement of Claim, Statement of Answer, Bigbie's BrokerCheck® Report, settlement agreement, and Petition for Expungement.

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 2092645) from registration records maintained by the CRD for Unnamed Party Charles Roy Bigbie, III (CRD Number 1158301) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Charles Roy Bigbie, III 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:

The evidence, based upon the undisputed documentary evidence and Bigbie's testimony, clearly indicates that: (1) Claimants were relatively sophisticated and wealthy individuals; (2) the two illiquid investments were approved by Claimants only after proper disclosures and proper due diligence; (3) Bigbie performed all due diligence that was available at the time of the investments; (4) the two investments at issue constituted a small portion of Claimants' overall reasonable, diversified, and suitable portfolio; (5) both investments performed as expected when the investments were made and for a considerable time thereafter; (6) the subsequent problems in the two investments arose and became knowable only years after the investments were made; (7) Bigbie personally invested in the same two offerings; and (8) Claimants received substantial returns on the investments and may yet receive more returns on the investments. The Panel noted that at the time of the investments, the investments were not unsuitable.

The Panel is aware that the underlying matter was resolved by settlement between Claimants and Respondent. Respondent agreed to pay Claimants \$34,000.00. Bigbie's

BrokerCheck® Report indicates that Bigbie contributed \$25,000.00 toward the \$34,000.00 settlement. Bigbie was not a named party in the proceeding and testified, without rebuttal, that he played no role in negotiating or approving the settlement. Bigbie was not an employee of Respondent, but rather an independent contractor licensed and trading through Respondent. Bigbie also testified that the \$25,000.00 payment was a required errors and omissions deductible payment to Respondent.

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
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 5, 2021 1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: January 4, 2022 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 \$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

Paul E. Dahlman	-	Public Arbitrator, Presiding Chairperson
Lynne M. Gomez	-	Public Arbitrator
Michael D. Briggs	-	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

Paul E. Dahlman

Paul E. Dahlman
Public Arbitrator, Presiding Chairperson

01/20/2022

Signature Date

Lynne M. Gomez

Lynne M. Gomez
Public Arbitrator

01/20/2022

Signature Date

Michael D. Briggs

Michael D. Briggs
Public Arbitrator

01/20/2022

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.

January 21, 2022

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