

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimants

Renee Scher  
Renee Scher 2003 Irrevocable Trust  
Stanley M. Scher Living Trust  
Kristopher Scher  
Kristopher Scher Trust

Case Number: 20-03638

vs.

Respondent

Eplanning Securities, Inc.

Hearing Site: Los Angeles, California

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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

**REPRESENTATION OF PARTIES**

For Claimants Renee Scher, Renee Scher 2003 Irrevocable Trust (“RS Trust”), and Stanley M. Scher Living Trust (“SMS Trust”): Rod Bidgoli, Esq., Irvine Law Group, LLP, Santa Ana, California.

For Claimants Kristopher Scher and Kristopher Scher Trust (“KS Trust”): Steve Buchwalter, Esq., Law Offices of Steve A. Buchwalter, P.C., Encino, California.

Hereinafter, Renee Scher, RS Trust, SMS Trust, Kristopher Scher, and KS Trust will collectively be referred to as “Claimants.”

Respondent Eplanning Securities, Inc. (“Respondent”) did not enter an appearance.

**CASE INFORMATION**

Statement of Claim filed on or about: April 21, 2020.

Claimants signed the Submission Agreement: April 20, 2020.

Respondent did not file a Statement of Answer or sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: fraud, deceit, misrepresentation, omission of material fact, negligence, breach of fiduciary duty, suitability, sale of unqualified/unregistered securities, sale of securities without a license, violation of California Corporation Code Section 25401, violation of Penal Code Section 496, and failure to supervise. The causes of action relate to investments in Jackson National Life Insurance Company Annuity, MetLife Investors USA Insurance Company, Ridgewood Energy Corporation P Fund, Ridgewood Energy Corporation U Fund, and TSG Capital Fund I, LLC.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. Compensatory damages in an amount not less than \$2,000,000.00;
2. Interest on the above amount at the legal rate;
3. Statutory damages as set forth in Corporations Code Sections 25501 and 25503;
4. Statutory damages and attorneys' fees as set forth in Penal Code Section 496(c);
5. Punitive damages in an amount to be determined by the arbitrator; and
6. Treble damages, attorneys' fees, and costs of this action pursuant to Code of Civil Procedure Section 1029.8.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Claimants' claim against Respondent was originally brought in FINRA Arbitration Number 20-01274. On October 28, 2020, Claimants filed a Motion for Default Award Under Rule 12801 of the Code of Arbitration Procedure ("Code").

Pursuant to Rule 12801 of the Code, the Chairperson appointed in FINRA Arbitration Number 20-01274 became the sole arbitrator to decide this matter.

Respondent did not file a Statement of Answer or properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

The Arbitrator determined that the Claim Notification letter dated April 28, 2020 was sent to Respondent by regular mail and FedEx. The Arbitrator further determined that Respondent was served with the Overdue Notice (including the Statement of Claim) dated July 1, 2020 by FedEx, as evidenced by the FedEx tracking information available online. The Arbitrator also determined that Respondent was served with the Notification of Arbitrator dated July 24, 2020 by Fed Ex, as evidenced by the FedEx tracking information available online. Therefore, the Arbitrator determined that Respondent is bound by the Arbitrator's ruling and determination.

The Claim Notification letter notified Respondent that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Respondent failed to register for the DR Portal.

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

### **FINDINGS**

This was a default case decided under FINRA Rule 12801. Rule 12801(e) provides:

#### "(e) Awards

(1) The arbitrator may not issue an award based solely on the nonappearance of a party. Claimants must present a sufficient basis to support the making of an award. The arbitrator may not award damages in an amount greater than the damages requested in the statement of claim, and may not award any other relief that was not requested in the statement of claim.

(2) The default award shall have no effect on any non-defaulting party."

While the actual claims filed by Claimants are greater than those discussed below, the discussion is limited to those claims on which Claimants presented evidence in support of their claims. The claims are based on the acts of Respondent's employees for whose acts Respondent is vicariously liable.

#### Claims of Kristopher Scher:

Kristopher Scher ("Kristopher") has requested damages of \$51,562.79 for his investment in the Jackson National Life Insurance Company Annuity and \$75,000 for his investment in the Ridgewood Energy Corporation's P Fund. Kristopher based his claim regarding the Jackson National Life Insurance Company Annuity on the difference between his actual return on that investment versus the return on investment during the comparable time for an investment in an S&P 500 fund. Kristopher purchased this annuity for \$150,000 in October 2005. At the time, the value of the annuity was \$139,156.93, which was the balance after commissions and fees. Kristopher sold the annuity in August 2015 for \$195,177.42, representing a gain of \$56,020.49. Kristopher presented a damage and unsuitability analysis prepared by an expert, Gregory C. Tevis, admitting that he had not reviewed the Jackson National Life Insurance Company Annuity contract but recommending mutual funds would have been a better investment and submitted a declaration with calculation of his damages by comparing the actual return to a return on an S&P 500 index fund during his holding period. However, any investment in mutual funds or the S&P 500 index would have resulted in violation of Kristopher's investment objectives, as set forth in the "New Account Information Notification", Exhibit A to Kristopher's declaration, in which his "investment objective" was "Preservation of Capital", which was defined as "Emphasis on preserving existing level of assets with a preference for holding cash and/or cash equivalents. (i.e., MMFs, CDs, Treasury Securities with maturities of one year or less)". Based on publicly available rates of return on one-year treasury notes compounded and reinvested during the Kristopher's holding period, even for the full \$150,000 invested by Kristopher, the return would have been less than what his actual return was. Accordingly, Kristopher has not suffered any damages as a result of his investment in the Jackson National Life Insurance Company Annuity. Kristopher is also seeking damages for his \$75,000 investment in the Ridgewood Energy Corporation's P Fund. Kristopher has presented sufficient evidence to show the lack of

appropriateness of this investment and his loss of \$75,000. Accordingly, Kristopher is entitled to an award of \$75,000 against defaulted Respondent.

Claims of Renee Scher, individually or as trustee of the Stanley M. Scher Living Trust:

Renee Scher, individually or as trustee of the Stanley M. Scher Living Trust (“Renee”) filed claims against Respondent seeking damages for (a) \$75,000 for an investment in the Ridgewood Energy Corporation’s P Fund; (b) \$150,000 for an investment in the Ridgewood Energy Corporation’s U Fund; and (c) \$61,645.28 for an investment in TSG Capital Fund I, LLC (net of dividends paid). Renee has presented evidence supporting her assertions that each of the foregoing investments was inappropriate and not properly vetted by Respondent’s employees and that her investments in these funds resulted in the losses she has claimed. Accordingly, Renee is entitled to an award of \$286,645.28 against defaulted Respondent.

**AWARD**

After considering the pleadings, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Kristopher Scher the sum of \$75,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Renee Scher the sum of \$286,645.28 in compensatory damages.
3. Respondent is liable for and shall reimburse Claimants the sum of \$750.00 for the nonrefundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys’ fees, are denied.

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

**ARBITRATOR**

Stephen Howard Marcus

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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**

***Stephen Howard Marcus***

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Stephen Howard Marcus  
Sole Public Arbitrator

**05/19/2021**

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Signature Date

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May 19, 2021

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