

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Craig W. McFadden, Individually
and on Behalf of the IRA FBO
Craig W. McFadden, and Heidi
Faber-McFadden, as Beneficiary
of the IRA FBO Craig W. McFadden

Case Number: 20-03734

vs.

Respondent

Voya Financial Advisors, Inc.

Hearing Site: Milwaukee, Wisconsin

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 administered under the Special Proceeding option for simplified cases.

REPRESENTATION OF PARTIES

For Claimants Craig W. McFadden, Individually and on Behalf of the IRA FBO Craig W. McFadden, and Heidi Faber-McFadden, as Beneficiary of the IRA FBO Craig W. McFadden (“Claimants”): Marnie C. Lambert, Esq., Lambert Law Firm, LLC, Columbus, Ohio.

For Respondent Voya Financial Advisors, Inc. (“Respondent”): Alexander A. Truitt, Esq. and Luigi Spadafora, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 5, 2020.
Claimants signed the Submission Agreement: November 5, 2020.

Statement of Answer filed on or about: January 27, 2021.
Respondent did not file a properly executed Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: negligence, negligent misrepresentation, unsuitability, violation of Wisconsin’s Uniform Securities Act (§551.501(2) and (3)) and violation of Wisconsin Statute §100.18. The causes of action related

to Claimants' allegation that the recommendation to invest retirement funds in an illiquid, high risk real estate investment trust, NorthStar Healthcare Income, Inc., was unsuitable.

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 and/or recessionary damages of no more than \$50,000.00; pre- and post-judgment interest at the rate of 5% (or whatever other legal rate is determined to be appropriate); attorneys' fees; costs of arbitration, including, but not limited to, FINRA filing fees, expert witness fees, arbitrator fees, and all forum fees and expenses; and such other and any further relief as the Arbitrator deems just, proper, and equitable.

In the Statement of Answer, Respondent requested that the Statement of Claim be dismissed in its entirety, with prejudice; an award of costs and FINRA fees; that all forum fees be assessed against Claimants; and such other and further relief as the Arbitrator deems just and appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim and been represented at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

This case originally proceeded in accordance with Rule 12800(c)(1) of the Code. In an Order dated March 19, 2021, the Arbitrator permitted Claimants to provide notice of their desire to proceed pursuant to Rule 12800(c)(3)(B) of the Code to accommodate the Arbitrator considering additional submissions. On April 5, 2021, Claimants filed a request to proceed under Rule 12800(c)(3)(B) of the Code. In an Order dated April 9, 2021, the Arbitrator granted Claimants' request.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
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 = \$ 600.00

**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 = \$ 750.00
Member Process Fee = \$ 1,750.00

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 @ \$450.00/session	= \$ 450.00
Hearing: May 10, 2021 1 session	
<hr/> Total Hearing Session Fees	<hr/> = \$ 450.00

The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$225.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Leonard Arthur Nelson

-

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

Leonard Arthur Nelson

Leonard Arthur Nelson
Sole Public Arbitrator

05/20/2021

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.

May 20, 2021

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