

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Gary Ecenbarger Roth IRA,
Gary G. Ecenbarger Revocable Trust, and
Kathy Ecenbarger Roth IRA

Case Number: 20-03743

vs.

Respondent

H. Beck, Inc.

Hearing Site: Indianapolis, Indiana

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 Gary Ecenbarger Roth IRA, Gary G. Ecenbarger Revocable Trust, and Kathy Ecenbarger Roth IRA (collectively, “Claimants”): Michael S. Hill, Esq. and Gary S. Menzer, Esq., Menzer & Hill, P.A., Boca Raton, Florida.

For Respondent H. Beck, Inc. (“Respondent”): Lydia R. Zaidman, Esq., D'Amura & Zaidman, PLLC, Austin, Texas.

CASE INFORMATION

Statement of Claim filed on or about: November 6, 2020.

Claimants signed the Submission Agreement: November 5, 2020.

Statement of Answer filed on or about: December 28, 2020.

Respondent signed the Submission Agreement: December 28, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of contract and warranties, promissory estoppel, violation of state securities statutes, breach of fiduciary duty, negligence and gross negligence, misrepresentation/omission and negligent misrepresentation/omission, unjust enrichment, failure to supervise, common law and statutory claims, and vicarious and control person liability. The causes of action related to Claimants’

allegation that a broker solicited unsuitable investments in speculative, high-risk, and high-commissioned alternative investments, namely Franklin Square Capital Corporation II (FSIC II) (n/k/a FS KKR Capital Corp. II (FSKR)) and FS Energy & Power Fund (FSEP).

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 \$326,000.00; an award of statutory damages pursuant to state laws, including rescissionary damages, lost opportunity damages, and accrued statutory interest; punitive damages; attorneys' fees; costs; filing and hearing fees; and other remedies the Panel deems proper and appropriate.

In the Statement of Answer, Respondent requested that the Panel enter an order dismissing all claims against it, award costs and disbursements relating to this proceeding, and award any further relief deemed just, proper, and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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

On December 28, 2020, Respondent filed a Motion to Dismiss Claimants' Claims as Ineligible for Submission to Arbitration ("Motion to Dismiss") pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On January 27, 2021, Claimants filed a Response to the Motion to Dismiss. On February 1, 2021, Respondent filed a Reply in Support of the Motion to Dismiss. On March 30, 2021, the Panel heard oral arguments on the Motion to Dismiss. Herein, the Panel grants the Motion to Dismiss on the following grounds:

This case was opened on November 5, 2020. The only act or omission specifically alleged as a basis for liability involved the purchase of two securities in July of 2014. There is no alleged act or omission of Respondent which occurred thereafter that could be a basis for liability. Accordingly, the claim, is not eligible for arbitration pursuant to Rule 12206(a) of the Code.

Respondent's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimants have to file in court; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, Respondent's Motion to Dismiss and all responses thereto, and the arguments presented at the pre-hearing conference on March 30, 2021, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed in their entirety pursuant to Rule 12206 of the Code.
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
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**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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-Hearing Conferences: March 3, 2021	1 session
March 30, 2021	1 session

Total Hearing Session Fees	= \$ 2,250.00
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The Panel has assessed \$1,125.00 of the hearing session fees, jointly and severally, to Claimants.

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

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

ARBITRATION PANEL

Jonathan B. Gilbert	-	Public Arbitrator, Presiding Chairperson
Jeffry M. Bauer	-	Public Arbitrator
Mark L. Miller	-	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

Jonathan B. Gilbert

Jonathan B. Gilbert
Public Arbitrator, Presiding Chairperson

04/05/2021

Signature Date

Jeffry M. Bauer

Jeffry M. Bauer
Public Arbitrator

04/01/2021

Signature Date

Mark L. Miller

Mark L. Miller
Public Arbitrator

04/01/2021

Signature Date

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April 05, 2021

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