

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

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In the Matter of the Arbitration Between:

Claimant

Douglas Thomas Bjornson

Case Number: 20-03807

vs.

Respondents

U.S. Bancorp Investments, Inc.,  
Kevin Ray Christ, Katherine Marie Whelan,  
and Gail Marie Van Horn

Hearing Site: Bismarck, North Dakota

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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: Customer vs. Member and Associated Persons

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Douglas Thomas Bjornson (“Claimant”): Jennifer A. Bjornson-Gillespie, Golden Valley, North Dakota.

For Respondents U.S. Bancorp Investments, Inc. (“USBI”), Kevin Ray Christ (“Christ”), Katherine Marie Whelan (“Whelan”), Gail Marie Van Horn (“Van Horn”) (collectively, “Respondents”): John Rock, Esq. and Kathryn A. Stephens, Esq., Rock Hutchinson, PLLP, Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: November 17, 2020.  
Claimant signed the Submission Agreement: November 16, 2020.

Statement of Answer filed by Respondents on or about: January 7, 2021.  
USBI, Van Horn, and Whelan signed the Submission Agreements: January 6, 2021.  
Christ signed the Submission Agreement: January 7, 2021.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: negligence, unauthorized withdrawals, and breach of fiduciary duty. The causes of action related to Claimant’s allegation that Christ, while working for USBI, allowed withdrawals to be taken from

Claimant's account without Claimant's permission or knowledge, and failed to exercise due diligence to verify that the withdrawals were authorized.

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, Claimant requested \$193,199.23 in compensatory damages, interest, recovery of commissions paid to Christ from Claimant's investments, reimbursement for taxes, and reimbursement of the fees associated with the unauthorized withdrawals.

In the Statement of Answer, Respondents requested that the Panel enter an award denying Claimant's Statement of Claim in all respects and dismissing it with prejudice; that all forum fees, costs, and expenses be assessed against Claimant; that all references to this matter be expunged from the registration records maintained by the Central Registration Depository for Christ, Whelan, and Van Horn; and an award of such other and further relief as the Panel deems just 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 February 11, 2021, Respondents filed notice of withdrawal of Christ's, Whelan's, and Van Horn's expungement requests.

On February 16, 2021, Respondents filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). The same day, Claimant filed a response opposing the Motion to Dismiss. On February 22, 2021, Respondents filed a Reply in Support of the Motion to Dismiss. On February 23, 2021, Claimant filed a Reply to the Motion to Dismiss. On March 10, 2021, the Panel heard oral arguments on the Motion to Dismiss during a pre-hearing conference that was conducted by videoconference. Herein, the Panel grants the Motion to Dismiss on the following grounds:

The most recent event giving rise to the claim occurred more than six years prior to the filing of the claim, to wit, more than eleven years.

Respondents' Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his 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, Respondents' Motion to Dismiss and all responses thereto, and the arguments presented at the pre-hearing conference on March 10, 2021, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's 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

*\*The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimant's filing fee of \$ 1,425.00. Upon conclusion of the matter, the Panel determined to waive the \$300.00 non-refundable portion of Claimant's filing fee.

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, USBI is assessed the following:

Member Surcharge = \$ 1,700.00  
Member Process Fee = \$ 3,250.00

**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 10, 2021 1 session

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Total Hearing Session Fees = \$ 2,250.00

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

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

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

**ARBITRATION PANEL**

Dean J. Dietrich	-	Public Arbitrator, Presiding Chairperson
Jo Anne F. Lewellen	-	Public Arbitrator
Gerry A. Gunderson	-	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**

***Dean J. Dietrich***

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Dean J. Dietrich  
Public Arbitrator, Presiding Chairperson

**03/11/2021**

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Signature Date

***Jo Anne F. Lewellen***

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Jo Anne F. Lewellen  
Public Arbitrator

**03/12/2021**

\_\_\_\_\_  
Signature Date

***Gerry A. Gunderson***

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Gerry A. Gunderson  
Non-Public Arbitrator

**03/12/2021**

\_\_\_\_\_  
Signature Date

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March 12, 2021

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