

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Matthew Soja
Sharon Soja

Case Number: 20-03811

vs.

Respondent

Silver Oak Securities, Inc.
Eric Field Hogarth
Joel Mark Johnson

Hearing Site: Hartford, Connecticut

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 and Associated Persons

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Matthew Soja and Sharon Soja: Howard M. Rosenfield, Esq., The Law Offices of Howard M. Rosenfield, Farmington, Connecticut.

For Respondent Silver Oak Securities, Inc. (“Silver Oak”): Chris G. Lazarini, Esq., Bass, Berry & Sims PLC, Memphis, Tennessee.

For Respondents Eric Field Hogarth (“Hogarth”) and Joel Mark Johnson (“Johnson”): Theodore Snyder, Esq., Murphy & McGonigle, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 13, 2020.

Amended Statement of Claim filed on or about: July 2, 2021.

Matthew Soja signed the Submission Agreement: November 13, 2020.

Sharon Soja signed the Submission Agreement: November 13, 2020.

Statement of Answer filed by Respondent Silver Oak on or about: February 12, 2021.

Statement of Answer to the Amended Statement of Claim filed by Respondent Silver Oak on or about: July 22, 2021.

Silver Oak did not sign the Submission Agreement.

Joint Statement of Answer filed by Respondents Hogarth and Johnson on or about: January 15, 2021.

Joint Statement of Answer to the Amended Statement of Claim filed by Respondents Hogarth and Johnson on or about: July 22, 2021.

Hogarth signed the Submission Agreement: January 5, 2021.

Johnson signed the Submission Agreement: January 4, 2021.

CASE SUMMARY

In the Statement of Claim, and Amended Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duties; violations of Connecticut Uniform Securities Act; failure to supervise; unsuitable activity; common law fraud; conversion; recklessness; breach of contract; misrepresentations, omissions and manipulative devices in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5 promulgated thereunder; and violation of the Fraudulent and Other Prohibited Practices sections of the Connecticut Unfair Trade Practices Act. The causes of action relate to Clearview Energy investments.

Unless specifically admitted in the Answer to the Amended Statement of Claim, Respondent Silver Oak denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Answer to the Amended Statement of Claim, Respondents Hogarth and Johnson denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Amended Statement of Claim, Claimants requested restitution for losses suffered, including and not limited to, rescission, interest, and such other relief as the Panel may find in law and equity.

In the Answer to the Amended Statement of Claim, Respondent Silver Oak requested that the Amended Statement of Claim, be denied in its entirety and that all costs and assessments be borne by Claimants.

In the Answer to the Amended Statement of Claim, Respondents Hogarth and Johnson requested that the Amended Statement of Claim be dismissed; that all forum fees be assessed against Claimants; and expungement of all references to the above-captioned arbitration from the registration records of Respondents Hogarth and Johnson maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Silver Oak 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, is bound by the determination of the Panel on all issues submitted.

On July 22, 2021, Respondent Silver Oak filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure (“Code”). On August 20, 2021, Claimants filed a response opposing the Motion to Dismiss. On August 25, 2021, Respondent Silver Oak filed a reply in further support of its Motion to Dismiss.

On July 22, 2021, Respondents Hogarth and Johnson filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure (“Code”). On August 20, 2021, Claimants filed a response opposing the Motion to Dismiss. On August 25, 2021, Respondents Hogarth and Johnson filed a reply in further support of their Motion to Dismiss.

On October 1, 2021, the Panel heard oral arguments on the Respondents’ Motions to Dismiss. On October 11, 2021, the Panel granted the Motions to Dismiss on the following grounds:

“The two Clearview Energy investments, which are the basis for Claimants' claim, and indeed all of the investments made on behalf of Claimants, occurred more than six (6) years prior to the initiation of the claim. The claim against Respondent Silver Oak is derivative of the claim against the individual Respondents and is thus barred by Rule 12206 as well. Given that the rule is a statute of repose, the claims against all Respondents must be dismissed.”

Respondents Silver Oak, Hogarth, and Johnson’s Motions to Dismiss pursuant to Rule 12206 of the Code are 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.

On November 1, 2021, Respondents Hogarth and Johnson filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded telephonic hearing on December 2, 2021, so the parties could present oral argument and evidence on Respondents Hogarth and Johnson’s request for expungement.

Claimants’ counsel participated in the expungement hearing and opposed the expungement request.

The Panel reviewed Hogarth and Johnson’s BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Panel noted that the disputes related to Occurrence Numbers 2102174 and 2102235 were not settled and, therefore, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings, the exhibits, and Respondent’s Hogarth and Johnson’s BrokerCheck® Reports and their testimonies.

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

AWARD

After considering the pleadings, all submissions regarding the Respondents' Motions to Dismiss, the testimony and evidence presented at the October 1, 2021 pre-hearing conference and the expungement hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed without prejudice pursuant to FINRA Rule 12206; Claimants are not prohibited from pursuing their claims in court pursuant to Rule 12206(b) of the Code.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2102174) from registration records maintained by the CRD for Respondent Eric Field Hogarth (CRD Number 4799191) with the understanding that, pursuant to Notice to Members 04-16, Respondent Eric Field Hogarth 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, 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:

Claimants argued that Respondent Hogarth misrepresented facts concerning the Clearview Energy investments, that the investments sold to Claimants were unsuitable, and that the individual Respondents breached a fiduciary duty to them. They also alleged that Respondent Johnson failed to properly supervise Respondent Hogarth.

The Panel noted that Respondent Hogarth produced credible evidence and found that: 1) Claimants were sophisticated investors with a large portfolio at the time they consulted him; 2) Respondent Hogarth's recommendation of the Clearview Energy investments responded to Claimants' request and need to provide certain tax benefits to offset tax liabilities that they would have otherwise incurred, which those investments accomplished; 3) the nature of the Clearview investments and the risk that all or part of the investments would be lost, and those explanations were reinforced by a call between the principal of Silver Oak and Claimants, (which Silver Oak required as a condition for making those investments) and Claimants understood the risk of loss with respect to those investments; 4) Respondent Hogarth had a reasonable basis to believe that the Clearview Energy and other investments of which Claimants complained were suitable for Claimants in light of Claimants' investment profile, the size of Claimants' portfolio, and in general acted in what he reasonably believed to be in Claimants' best interest; and 5) Respondent Hogarth did not violate any fiduciary duties owed to Claimants.

Accordingly, the Panel found the allegations against Respondent Hogarth are false.

3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2102235) from registration records maintained by the CRD for Respondent Joel Mark Johnson (CRD Number 1941908) with the understanding that, pursuant to Notice to Members 04-16, Respondent Joel Mark Johnson 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, the Panel has made the following Rule 2080 affirmative findings of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

Claimants argued that Respondent Hogarth misrepresented facts concerning the Clearview Energy investments, that the investments sold to Claimants were unsuitable, and that the individual Respondents breached a fiduciary duty to them. They also alleged that Respondent Johnson failed to properly supervise Respondent Hogarth.

Respondent Johnson never advised Claimants, never participated in any meetings with them, had no part in the sale or recommendation of those investments, received no direct benefit from the sale of those investments, and never supervised Respondent Hogarth.

Accordingly, the Panel found the allegations against Respondent Johnson are false and that Respondent Johnson was never involved in the alleged investment-related sales practice violations.

FEES

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	1,575.00
Expungement Filing Fee	= \$	1,575.00
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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent Silver Oak Securities, Inc. 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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: March 8, 2021	1 session	
July 1, 2021	1 session	
October 1, 2021	1 session	

One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: December 2, 2021	1 session	

Total Hearing Session Fees	= \$	4,500.00
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The Panel has assessed \$2,250.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed the \$1,125.00 expungement hearing fees jointly and severally to Respondents Hogarth and Johnson.

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

ARBITRATION PANEL

Steven R. Rolnick	-	Public Arbitrator, Presiding Chairperson
Paul Smith Besson	-	Public Arbitrator
William D. Stempel	-	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

Steven R. Rolnick

Steven R. Rolnick
Public Arbitrator, Presiding Chairperson

12/20/2021

Signature Date

Paul Smith Besson

Paul Smith Besson
Public Arbitrator

12/19/2021

Signature Date

William D. Stempel

William D. Stempel
Public Arbitrator

12/19/2021

Signature Date

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December 22, 2021

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