

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Harvey Langford
Michael Langford

Case Number: 20-04030

vs.

Respondent

AXA Advisors, LLC
a/k/a Equitable Advisors, LLC

Hearing Site: Birmingham, Alabama

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 Harvey Langford and Michael Langford: Kristian Kraszewski, Esq., Kyros Law, Miami, Florida.

For Respondent AXA Advisors, LLC a/k/a Equitable Advisors, LLC: Johan E. Tatoy, Esq., Equitable Advisors, LLC, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: December 11, 2020.

Michael Langford signed the Submission Agreement: December 11, 2020.

Harvey Langford signed the Submission Agreement: December 11, 2020.

Statement of Answer filed by Respondent on or about: February 1, 2021.

Respondent signed the Submission Agreement: January 22, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty, negligence, and negligent supervision. The causes of action relate to investments purchased by Claimants.

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: judgment against Respondent for compensatory damages in the amount of \$60,000.00, plus interest, costs, commission disgorgement, and such other damages the panel deems appropriate.

In the Statement of Answer, Respondent requested that the Statement of Claim be dismissed with prejudice and that Claimants take nothing thereby.

OTHER ISSUES CONSIDERED AND DECIDED

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

The parties use the names “AXA Advisors, LLC” and “Equitable Advisors, LLC” interchangeably for Respondent throughout the pleadings and other materials.

On February 23, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure (“Code”). On March 24, 2021, Claimants filed a response opposing the Motion to Dismiss. On March 28, 2021, Respondent filed a reply in support of the Motion to Dismiss. On April 15, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. On April 19, 2021, the Arbitrator granted the Motion to Dismiss on the grounds that:

The Statement of Claim was filed December 11, 2020 and states the purchases of the annuities at issue occurred in December of 2013 and delivery occurred in January of 2014. This is outside the six-year eligibility period of Rule 12206. Thus, in order for Claimants’ claims to be arbitrable, an occurrence or event giving rise to the claims must have occurred or continued to a time within the six-year period.

The Statement of Claim alleges that “For years after the purchase Claimants were misled regarding the annuities that were purchased. Claimants believed they were purchasing an investment that worked like the CDs they had invested in for years.” However, the Statement of Claim contains no allegations of any specific instances regarding the alleged providing of misleading information after the purchases and within the six-year period. Conversely, the Statement of Answer and its exhibits show the written disclosures which would have made Claimants aware of any misleading information prior to the beginning of the period. The Statement of Claim also has no allegations of specific facts explaining discoveries that led to the withdrawal from the annuities in 2018.

Thus, the Statement of Claim does not support a determination that an event or occurrence giving rise to the claims occurred within the six-year eligibility period, and thus this case is dismissed without prejudice under Rule 12206.

Respondent’s Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Arbitrator 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.

AWARD

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

1. Claimants' claims are dismissed without prejudice pursuant to Rule 12206 of the Code.

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	= \$	975.00
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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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	= \$	1,100.00
Member Process Fee	= \$	2,250.00

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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	900.00
Pre-Hearing Conferences: March 29, 2021	1 session	
April 15, 2021	1 session	

Total Hearing Session Fees	= \$	900.00
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The Arbitrator has assessed \$450.00 of the hearing session fees jointly and severally to Claimants.

The Arbitrator has assessed \$450.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Joseph Neal Richardson

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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

Joseph Neal Richardson

Joseph Neal Richardson
Sole Public Arbitrator

04/20/2021

Signature Date

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April 20, 2021

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