

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Mark Conover
Diedre Conover
Diedre Conover IRA
Mark Conover IRA

Case Number: 20-04158

vs.

Respondent

Triad Advisors LLC

Hearing Site: Salt Lake City, Utah

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 Mark Conover (“Mark Conover”), Diedre Conover (“Diedre Conover”), Diedre Conover IRA (“DC IRA”), and Mark Conover IRA (“MC IRA”): Kirk G. Smith, Esq., Shepherd, Smith, Edwards & Kantas, LLP, Houston, Texas.

Hereinafter, Mark Conover, Diedre Conover, DC IRA, and MC IRA are collectively referred to as “Claimants”.

For Respondent Triad Advisors LLC (“Respondent”): Derek C. Anderson, Esq., Winget, Spadafora & Schwartzberg, LLP, Boulder, Colorado.

CASE INFORMATION

Statement of Claim filed on or about: December 23, 2020.

Claimants signed the Submission Agreement: December 8, 2020.

Statement of Answer filed by Respondent on or about: March 4, 2021.

Respondent signed the Submission Agreement: March 2, 2021.

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; and claims under common law. The causes of action relate to GPB Capital investments, American Realty Capital Trust and other unspecified, privately held Real Estate Investment Trust Investments.

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:

1. Compensatory damages in an amount between \$100,000.00 and \$500,000.00;
2. Interest;
3. Costs;
4. Direct and/or consequential damages;
5. Statutory and/or market adjusted damages;
6. Punitive damages; and
7. Interest and costs as provided by statute, in an amount which Claimants reserve the right to amend at any time including during hearings held on these matters, as follows:
 - a. all sums lost in Claimants' account on any or all transactions made or not made;
 - b. all lost opportunities incurred as a result of acts and/or omissions;
 - c. rescission of any or all transactions as sought;
 - d. statutory damages as provided by applicable law;
 - e. punitive damages;
 - f. pre-award and pre-judgement interest on all sums invested from the date deposited until the date of the award and/or judgement and until such sums are paid, all at the highest rate allowed by law;
 - g. all costs of these proceedings and for recovery of damages incurred, including legal fees, including while on appeal, if any, and for collection; and
 - h. any and all other relief available to Claimants, in law or equity or otherwise, which may be granted to Claimants by this Panel.

In the Statement of Answer, Respondent requested:

1. Dismissal of the Statement of Claim in its entirety;
2. Costs and expenses of this arbitration, including forum fees and reasonable attorneys' fees; and
3. Such other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On June 8, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On July 15, 2021, Claimants filed a response opposing the Motion to Dismiss. On July 22, 2021, Respondent filed its reply in support of the Motion to

Dismiss. On October 12, 2021, the Panel heard oral arguments on the Motion to Dismiss. The Panel hereby grants the Motion to Dismiss for reasons stated in the Findings section below.

Respondent's 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; 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.

FINDINGS

The latest of the five investments at issue in this case was acquired December 14, 2014. The claim in this matter was filed on December 23, 2020, more than six-years later. Claimants argued, among other things, that Respondent had duties that continued beyond the date when the investments were acquired and that there was a continuing breach within the six-year period. The Panel found that all the claims made in the Statement of Claim filed by Claimants related to matters on or before the date the investments were acquired, and no later breaches were raised in the Statement of Claim.

The Panel found that Claimants' other arguments relating to discovery of damages and tolling were not well taken.

Thus, the Panel unanimously orders that this case be dismissed under FINRA Rule 12206.

AWARD

After considering the pleadings, the testimony and evidence presented at the October 12, 2021 recorded pre-hearing conference, 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 Rule 12206.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive 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 Arbitrators, including a pre-hearing conference with the Arbitrators, 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: April 6, 2021	1 session	
October 12, 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 fees to Respondent.

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

ARBITRATION PANEL

Langdon T. Owen, Jr.	-	Public Arbitrator, Presiding Chairperson
Rick L. Knuth	-	Public Arbitrator
Thomas R. Bromberg	-	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

Langdon T. Owen, Jr.

Langdon T. Owen, Jr.
Public Arbitrator, Presiding Chairperson

10/26/2021

Signature Date

Rick L. Knuth

Rick L. Knuth
Public Arbitrator

10/26/2021

Signature Date

Thomas R. Bromberg

Thomas R. Bromberg
Public Arbitrator

10/26/2021

Signature Date

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October 26, 2021

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