

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Mark Hallick and Deidre Hallick

Case Number: 21-00021

vs.

Respondents

Investacorp Inc., Securities America, Inc.,
First Allied Securities, Inc., and
Stephen Curtis Lawler

Hearing Site: Chicago, Illinois

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. Members and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Mark Hallick and Deidre Hallick, hereinafter collectively referred to as “Claimants”: Jason J. Kane, Esq. and Christa M. Hibbard, Esq., Peiffer Wolf Carr Kane & Conway, LLP, Pittsford, New York and Tom DeBow, Esq., Peiffer Wolf Carr Kane & Conway, LLP, Rochester, New York.

For Respondents Investacorp Inc. (“Investacorp”) and Securities America, Inc. (“Securities America”): Justin Sacca, Esq., Advisor Group, Inc., Jersey City, New Jersey.

For Respondents First Allied Securities, Inc. (“First Allied”) and Stephen Curtis Lawler (“Lawler”): Andrew J. Dorman, Esq., Sean T. Needham, Esq., and Andrew T. Illig, Esq., Reminger Co., L.P.A., Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: January 6, 2021.

Claimants signed the Submission Agreement: January 6, 2021.

Statement of Answer filed by Investacorp and Securities America on or about: March 25, 2021.

Investacorp and Securities America signed the Submission Agreements: March 25, 2021.

Statement of Answer filed by First Allied and Lawler on or about: March 26, 2021.

First Allied signed the Submission Agreement: March 26, 2021.

Lawler signed the Submission Agreement: March 25, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violations of FINRA Rules 2110 and 2111, negligence, misrepresentations and omissions of material facts, and breach of fiduciary duty. The causes of action related to Claimants' allegation that Respondents made unsuitable recommendations resulting in an overconcentration of illiquid Real Estate Investment Trusts ("REITs"), including New York City REIT, and other alternative investments.

Unless specifically admitted in the Statement of Answer, Investacorp and Securities America denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, First Allied and Lawler denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested an award of all losses of principal suffered by Claimants; all interest, commissions and fees paid by Claimants; the loss of income that would have been received had Claimants' account been managed properly, as well as other losses, foreseeable or not, that Claimants have suffered, including non-pecuniary losses; attorneys' fees, costs and other expenses; interest, both pre-judgment and post-judgment; all other sums Claimants are entitled to at law or equity; and punitive damages.

In the Statement of Answer, Investacorp and Securities America requested that the Panel dismiss the claims in their entirety and grant such other and further relief as the Panel deems equitable, just, and proper.

In the Statement of Answer, First Allied and Lawler requested that the Statement of Claim be dismissed in its entirety and that they be awarded their costs and expenses associated with defending this action, including reimbursement of expenses and/or forum fees.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 15, 2021, Investacorp and Securities America filed a Motion to Dismiss the Claim pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On October 28, 2021, First Allied and Lawler filed a Motion to Dismiss pursuant to Rule 12206 of the Code, collectively, "Motions to Dismiss." On November 15, 2021, Claimants filed an Opposition to the Motions to Dismiss ("Opposition"). On November 22, 2021, Investacorp and Securities America filed a reply to Claimants' Opposition. On December 20, 2021, the Panel heard oral arguments on the Motions to Dismiss. Herein, the Panel grants the Motions to Dismiss on the grounds that the occurrences and events set forth in the Statement of Claim all transpired more than six years before the filing of this arbitration proceeding and are, thus, ineligible for FINRA arbitration.

The 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.

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

AWARD

After considering the pleadings, the Motions to Dismiss and responses thereto, and the arguments presented at the 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 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 = \$ 1,575.00

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as parties, Investacorp, Securities America, and First Allied, are each 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: April 29, 2021 1 session

December 20, 2021 1 session

Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed \$1,687.50 of the hearing session fees, jointly and severally, to Claimants.

The Panel has assessed \$562.50 of the hearing session fees, jointly and severally, to Investacorp, Securities America, First Allied, and Lawler.

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

ARBITRATION PANEL

Leonard Arthur Nelson	-	Public Arbitrator, Presiding Chairperson
Jonathan B. Gilbert	-	Public Arbitrator
Stuart W. Smith	-	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

Leonard Arthur Nelson

Leonard Arthur Nelson
Public Arbitrator, Presiding Chairperson

01/06/2022

Signature Date

Jonathan B. Gilbert

Jonathan B. Gilbert
Public Arbitrator

01/06/2022

Signature Date

Stuart W. Smith

Stuart W. Smith
Public Arbitrator

01/06/2022

Signature Date

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January 06, 2022

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