

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

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In the Matter of the Arbitration Between:

Claimant  
Elizabeth E. Fox

Case Number: 21-00029

vs.

Respondent  
Money Concepts Capital Corp.

Hearing Site: Charlotte, North Carolina

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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

**REPRESENTATION OF PARTIES**

For Claimant Elizabeth E. Fox: John H. Griffing, Esq., Griffing Leazer, PLLC, Gastonia, North Carolina.

For Respondent Money Concepts Capital Corp.: Kathy M. Klock, Esq., Akerman LLP, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 6, 2021.  
Elizabeth E. Fox signed the Submission Agreement: January 6, 2021.

Statement of Answer filed by Respondent on or about: March 12, 2021.  
Money Concepts Capital Corp. signed the Submission Agreement: March 8, 2021.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: investment in unsuitable security; breach of fiduciary duty; fraud; misrepresentation; and non-disclosures. The causes of action relate to Claimant's investment in a New York City Real Estate Investment Trust.

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, Claimant requested: compensatory damages in the amount of \$45,000.00; punitive damages in the amount of \$10,000.00; and other monetary relief in the amount of \$45,000.00.

In the Statement of Answer, Respondent requested: dismissal of the Statement of Claim in its entirety; attorneys' fees; forum fees; and other costs and expenses.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On March 12, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On April 13, 2021, Claimant filed a response opposing the Motion to Dismiss. On July 14, 2021, the Arbitrator heard oral arguments on the Motion to Dismiss. On July 19, 2021, the Arbitrator granted the Motion to Dismiss on the grounds that:

The Arbitrator finds that Respondent has unclean hands in this matter, but also finds that the eligibility rule applies. The instruments in question were purchased in May 2013 and December 2014, more than 6 years before the Statement of Claim was filed. Claimant was also contributorily negligent in the resultant losses incurred. Therefore, the Motion to Dismiss is granted but all forum fees, including Claimant's non-refundable filing fee, are assessed against Respondent.

Respondent's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Arbitrator without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing her 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. Claimant's claims are dismissed with prejudice pursuant to Rule 12206 of the Code.
2. Respondent is liable for and shall pay to Claimant \$225.00 to reimburse Claimant for the non-refundable portion of the claim filing fee previously paid to FINRA Dispute Resolution Services.

### **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

= \$ 975.00

*\*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 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:

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$ 1,350.00
Pre-Hearing Conferences: May 7, 2021	1 session
June 29, 2021	1 session
July 14, 2021	1 Session

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Total Hearing Session Fees	= \$ 1,350.00
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The Arbitrator has assessed the total hearing session fees to Respondent.

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

**ARBITRATOR**

Leonard E. Benade

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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**

***Leonard E. Benade***

Leonard E. Benade  
Sole Public Arbitrator

**07/22/2021**

Signature Date

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July 22, 2021

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