

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

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In the Matter of the Arbitration Between:

Claimant  
ACAP Financial, Inc.

Case Number: 21-00237

vs.

Respondent  
Alpine Securities Corporation

Hearing Site: Salt Lake City, Utah

vs.

Third Party Respondent  
Kirk Lynn Ferguson

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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: Member vs. Member vs. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant ACAP Financial, Inc. (“Claimant”): David S. Hunt, Esq., David S. Hunt, PC, Salt Lake City, Utah.

For Respondent Alpine Securities Corporation (“Alpine”): Maranda E. Fritz, Esq., Maranda E. Fritz PC, New York, New York.

For Third Party Respondent Kirk Lynn Ferguson (“Ferguson”): David S. Hunt, Esq., David S. Hunt, PC, Salt Lake City, Utah.

**CASE INFORMATION**

Statement of Claim filed on or about: January 29, 2021.  
Claimant signed the Submission Agreement: January 29, 2021.

Statement of Answer, Counterclaim, and Third Party Claim filed by Alpine on or about: March 23, 2021.

Alpine signed the Submission Agreement: October 26, 2021.

Answer to the Counterclaim and Third Party Claim filed by Claimant and Ferguson on or about: April 12, 2021.

Ferguson signed the Submission Agreement: March 14, 2021.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; breach of duty of good faith and fair dealing; and unjust enrichment. The causes of action relate to the clearing agreement between Claimant and Alpine.

In the Statement of Answer, Alpine denied the allegations made in the Statement of Claim.

In the Counterclaim and Third Party Claim, Alpine asserted the following causes of action against Claimant: breach of contract – failure to comply with securities laws and regulations; breach of contract – failure to manage and cause closure or transfer of account; and breach of contract – failure to pay Alpine the fees and costs associated with its abandonment of its accounts. Alpine also asserted a cause of action for veil piercing against Ferguson. The causes of action relate to the clearing agreement entered between Claimant, Alpine, and Ferguson.

In the Answer to the Counterclaim and Third Party Claim, Claimant and Ferguson denied the allegations made in the Counterclaim and Third Party Claim.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Return of all fees and commissions wrongfully withheld by Alpine in the amount of \$166,532.58;
2. Return of all deposits wrongfully withheld by Alpine in the amount of \$50,000.00;
3. Interest in the amount of \$86,613.00 pursuant to Utah law on the fees, commissions, and deposits wrongfully withheld by Alpine;
4. Fees and costs, including attorneys' fees, experts' fees, and all arbitration costs;
5. Punitive damages in the amount of \$100,000.00 or an amount to be determined in arbitration; and
6. Such other relief as is deemed just and proper.

In the Statement of Answer, Alpine requested all claims made in the Statement of Claim be denied.

In the Counterclaim and Third Party Claim, Alpine requested:

1. Compensatory damages in an amount in excess of \$1,000,000.00 to be determined at the hearing;
2. The costs and expenses associated with this arbitration; and
3. Such other and further relief as the Panel deems just and proper.

In the Answer to the Counterclaim and Third Party Claim, Claimant and Ferguson requested:

1. Alpine take nothing from its Counterclaim and Third Party Claim;
2. The claims be dismissed; and
3. Fees and costs awarded to Claimant.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

During the evidentiary hearing, prior to conclusion of case in chief, Claimant moved for dismissal of Alpine’s Third Party Claim against Ferguson on the basis that Respondent failed to adequately plead a basis for piercing the corporate veil. The Panel deferred the decision on the motion until the conclusion of the hearing. The Panel hereby denies the motion.

**AWARD**

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

1. Claimant’s claims are denied in their entirety.
2. Alpine’s counterclaims are denied in their entirety.
3. Alpine’s third party claims are denied in their entirety.
4. 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 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                  | = \$ | 2,125.00 |
| Counterclaim/Third-Party Claim Filing Fee | = \$ | 3,400.00 |

*\*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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as parties, Claimant and Alpine are assessed the following:

Claimant:

|                    |      |          |
|--------------------|------|----------|
| Member Surcharge   | = \$ | 1,900.00 |
| Member Process Fee | = \$ | 6,175.00 |

Alpine:

|                    |      |          |
|--------------------|------|----------|
| Member Surcharge   | = \$ | 1,900.00 |
| Member Process Fee | = \$ | 6,175.00 |

**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:

|   |            |          |
|---|------------|----------|
| One (1) pre-hearing session with a single Arbitrator @ \$450.00/session | = \$       | 450.00   |
| Pre-Hearing Conference: September 1, 2021                               | 1 session  |          |
| One (1) pre-hearing session with the Panel @ \$1,400.00/session         | = \$       | 1,400.00 |
| Pre-Hearing Conference: June 16, 2021                                   | 1 session  |          |
| Five (5) hearing sessions @ \$1,400.00/session                          | = \$       | 7,000.00 |
| Hearings:   |            |          |
| October 27, 2021  | 2 sessions |          |
| October 28, 2021  | 2 sessions |          |
| October 29, 2021  | 1 session  |          |

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|                            |      |          |
|----------------------------|------|----------|
| Total Hearing Session Fees | = \$ | 8,850.00 |
|----------------------------|------|----------|

The Panel has assessed \$4,425.00 of the hearing session fees to Claimant.

The Panel has assessed \$4,425.00 of the hearing session fees to Alpine.

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

**ARBITRATION PANEL**

|                      |   |  |
|----------------------|---|--|
| Knute Arthur Rife    | - | Public Arbitrator, Presiding Chairperson |
| Kevin Edward Anthony | - | Public Arbitrator                        |
| Richard M. Reider    | - | Non-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**

***Knute Arthur Rife***

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Knute Arthur Rife  
Public Arbitrator, Presiding Chairperson

**11/04/2021**

\_\_\_\_\_  
Signature Date

***Kevin Edward Anthony***

\_\_\_\_\_  
Kevin Edward Anthony  
Public Arbitrator

**11/05/2021**

\_\_\_\_\_  
Signature Date

***Richard M. Reider***

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Richard M. Reider  
Non-Public Arbitrator

**11/05/2021**

\_\_\_\_\_  
Signature Date

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November 05, 2021

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