

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

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In the Matter of the Arbitration Between:

Claimants

Sarah J. Basler, and Donald S. Basler, TTEE  
of the The Sarah J. Basler Living Trust U/A 7/2/98

Case Number: 21-00479

vs.

Respondents

A.G.P. / Alliance Global Partners  
Euro Pacific Capital, Inc.  
Peter David Schiff  
Gerald Lee Mars  
William Gordon McBean  
Hemant Kathuria

Hearing Site: Columbia, South 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 and Associated Persons

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Sarah J. Basler, and Donald S. Basler, TTEE of the The Sarah J. Basler Living Trust U/A 7/2/98: David B. Vermont, Esq., Securities Arbitration Law Group, PLLC, Washington, District of Columbia.

For Respondents A.G.P. / Alliance Global Partners (“A.G.P.”), Euro Pacific Capital, Inc. (“Euro Pacific”), Peter David Schiff (“Schiff”), Gerald Lee Mars (“Mars”), William Gordon McBean (“McBean”), and Hemant Kathuria (“Kathuria”) (hereinafter collectively referred to as “Respondents”): Kurt T. Kalberer, II, Esq., Kalberer LLP, New York, New York.

\*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: February 22, 2021.

Sarah J. Basler, and Donald S. Basler, TTEE of the The Sarah J. Basler Living Trust U/A 7/2/98 signed the Submission Agreement: February 22, 2021.

Respondents did not file a Statement of Answer.  
A.G.P. / Alliance Global Partners did not sign the Submission Agreement.  
Euro Pacific Capital, Inc. did not sign the Submission Agreement.  
Peter David Schiff signed the Submission Agreement: November 1, 2021.  
Gerald Lee Mars did not sign the Submission Agreement.  
William Gordon McBean signed the Submission Agreement: November 1, 2021.  
Hemant Kathuria did not sign the Submission Agreement.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: qualitative and quantitative unsuitability; failure to supervise; breach of fiduciary duty; breach of contract; and negligent misrepresentation and omissions. The causes of action relate to Claimants' investment in private placement offerings in various gold, silver, and other precious metals companies.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested: actual/compensatory damages of approximately \$273,287.74, interest, costs, all forum fees, and for any and other damages deemed appropriate by the Panel.

Respondents Schiff and McBean filed a request for expungement of all references to this matter from Respondents Schiff and McBean's Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

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

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

Respondents A.G.P., Euro Pacific, Mars, and Kathuria did not file a properly executed Submission Agreement but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and are bound by the determination of the Panel on all issues submitted.

On June 21, 2021, Respondents' counsel registered for the DR Portal, providing Respondents with access to all documents filed in the case, including the Statement of Claim and Notification of Panel. Therefore, Respondents are bound by the Panel's ruling and determination.

On August 20, 2021, Claimant filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On September 9, 2021, Respondents filed with FINRA Dispute Resolution Services a request to re-open this matter for the sole purpose of seeking expungement of all references to this matter from the individual Respondents' CRD records, to which Claimants agreed. By Order, dated October 8, 2021, the Panel determined the case would be re-opened for the purpose of considering Respondents' requests for expungement.

On October 18, 2021, Respondents Schiff and McBean filed a Motion for Expungement and advised that Respondent Mars and Respondent Kathuria were not parties to this expungement request and reserved their respective rights to seek expungement of the subject customer claims at a later time in a new proceeding.

The Panel conducted a recorded, telephonic hearing on November 2, 2021, so the parties could present oral argument and evidence on Respondent Schiff's and Respondent McBean's requests for expungement.

Claimants did not participate in the expungement hearing and did not oppose the request for expungement.

The Panel reviewed Respondent Schiff's and Respondent McBean's BrokerCheck® reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement. In addition, the Panel noted that Respondent Schiff paid the settlement amount personally and Respondent McBean did not contribute to the settlement payment. The Panel determined that this is a very unique and atypical factual situation. Respondent Schiff was the sole owner and CEO of Respondent Alliance Partners Corp. at the time the contested Investments were made by the Claimants. As the owner/CEO, he was not involved with the Claimants at all. Respondent Schiff testified that he sold the company in 2018 and, that as part of the deal, he retained all liabilities that arose, or could have arisen, prior to the effective date of the sale. As the Claimants alleged approximately \$275,000 in damages, Respondent Schiff would be liable for that amount under his agreement. He did not want to risk that amount although he felt quite comfortable with his legal position. More importantly, even if he won in arbitration, he believes that he would have spent more than the settlement amount on his legal fees. Further, the contested private placement investments ("Investments"), although illiquid, still potentially had future value. So, in return for the settlement amount, he received ownership (i.e., purchased) the Investments. Thus, instead of a typical settlement where a Claimant is paid a negotiated amount for damages, Respondent Schiff personally purchased the Investments from Claimants. In return, the arbitration was not pursued, and a formal settlement agreement was negotiated and executed.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimony of Respondent Schiff and Respondent McBean; the pleadings with all the exhibits; Respondent Schiff's and Respondent McBean's BrokerCheck® reports; the settlement agreement; and the fact that Claimant did not appear at the expungement hearing or contest the requests for expungement.

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

### **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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2144643 for Respondent Schiff and Occurrence Number 2117757 for Respondent McBean) from registration records maintained by the CRD for Respondent Peter David Schiff (CRD Number 1759484) and Respondent William Gordon McBean (CRD Number 1901190) with the understanding that, pursuant to Notice to Members 04-16, Respondent Peter David Schiff and Respondent William Gordon McBean must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

The expungement is being granted because the facts fit both FINRA Rule 2080(b)(1)(A) and (C).

The claim, allegation, or information is factually impossible or clearly erroneous (FINRA Rule 2080(b)(1)(A)). The allegation of breach of fiduciary duties is false and factually impossible because Respondent Schiff's and Respondent McBean's conduct was, at all times, in accordance with the standards of all FINRA Rules. At the time that the Investments were purchased by Claimants, Respondent Schiff was the sole owner and CEO of Respondent A.G.P./Alliance Global Partners (d/b/a Euro Pacific Capital). At the same time, Respondent McBean was the President of Respondent A.G.P./Alliance Global Partners. When Claimants purchased the Investments, Claimants' financial advisor at Respondent A.G.P./Alliance Global Partners was someone other than Respondent Schiff or Respondent McBean. This individual was the only financial advisor at Respondent A.G.P./Alliance Global Partners directly associated with the purchase of the Investments. At no time relevant herein did either Respondent Schiff or Respondent McBean act as a financial advisor to Claimants. Further, they neither solicited nor even communicated with Claimants in connection with the purchase of the Investments. Neither Respondent Schiff nor Respondent McBean directly supervised the individual financial advisor.

The claim, allegation, or information is false (FINRA Rule 2080(b)(1)(C)). Without repeating the statements above, the same facts and reasoning apply to this affirmative finding of fact. The Panel finds that Claimants' claim is false in respect to both Respondent Schiff and Respondent McBean.

### **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 assessed to Claimants = \$ 1,425.00

A Counterclaim Filing Fee is assessed to each Respondent requesting expungement. Accordingly, Respondent Schiff and Respondent McBean are each assessed a Counterclaim 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 a party, Respondent A.G.P. 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00  
Pre-Hearing Conference: October 7, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00  
Hearing: November 2, 2021 1 session

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Total Hearing Session Fees = \$ 2,250.00

The Panel has assessed the total hearing session fees jointly and severally to Respondent Schiff and Respondent McBean.

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

**ARBITRATION PANEL**

Harvey R. Linder	-	Public Arbitrator, Presiding Chairperson
Stuart K. Furman	-	Public Arbitrator
Kenneth R. Starr	-	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**

***Harvey R. Linder***

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Harvey R. Linder  
Public Arbitrator, Presiding Chairperson

**11/09/2021**

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Signature Date

***Stuart K. Furman***

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Stuart K. Furman  
Public Arbitrator

**11/09/2021**

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

***Kenneth R. Starr***

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Kenneth R. Starr  
Public Arbitrator

**11/09/2021**

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

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November 10, 2021

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