

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Betsy Sachs

Case Number: 21-00550

vs.

Respondents
Whitney Staunton Boucher
James Joseph McKenna Jr.
David L. Ward

Hearing Site: Providence, Rhode Island

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. Associated Persons and Non-Member

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

Claimant Betsy Sachs appeared pro se.

For Respondents Whitney Staunton Boucher (“Boucher”), and James Joseph McKenna Jr. (“McKenna”): Samuel E. Cohen, Esq., Marshall Dennehey, Philadelphia, Pennsylvania.

Respondent David L. Ward (“Ward”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: March 15, 2021.
Betsy Sachs signed the Submission Agreement: March 18, 2021.

Joint Statement of Answer filed by Respondents Boucher and McKenna on or about: May 19, 2021.

Boucher signed the Submission Agreement: May 18, 2021.
McKenna signed the Submission Agreement: May 19, 2021.

Ward did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; violation of SEC rules; fraud or deceit; misrepresentation and omissions; violation of state laws; recommendations without due diligence; and suspicious activities report. The causes of action relate to unspecified securities.

Unless specifically admitted in the Statement of Answer, Boucher and McKenna 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 that exceeds \$100,000.00.

In the Statement of Answer, Boucher and McKenna requested that the Statement of Claim be dismissed with prejudice; costs and forum fees; attorneys' fees; expungement of this matter (Occurrence Number 1628777 for Boucher and Occurrence Number 2125906 for McKenna) from their Central Registration Depository ("CRD") records; and such further relief as the Arbitrators deem just and reasonable.

OTHER ISSUES CONSIDERED AND DECIDED

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

A Statement of Claim was filed on March 1, 2021. It was not served on Respondents and not considered by the Panel.

Ward is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against Ward.

On October 28, 2021, Boucher and McKenna filed a Motion to Dismiss and for Sanctions pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). On October 28, 2021, Claimant filed a response opposing the Motion to Dismiss. On November 2, 2021, Boucher and McKenna filed a Reply in support of the motion and on November 4, 2021, Claimant filed a Sur-Reply and Memorandum of Law further opposing the motion. On January 11, 2022, the Panel heard oral arguments on the Motion to Dismiss and for Sanctions. On January 12, 2022, the Panel granted the Motion to Dismiss pursuant to subparagraph (a)(6)(C) of Rule 12504 on the grounds that:

1. Claimant Previously Brought Multiple Claims regarding the Same Dispute:

Claimant's allegations in the current arbitration involve suitability of investments and supervision associated with Claimant's investment portfolio that was transferred away from Janney Montgomery Scott, LLC ("JMS"), in July 2010, nearly 11 years before this arbitration was filed, as well as the suitability of a mortgage. The dispute in this arbitration was at issue twice before: (1) in FINRA Arbitration Case No. 12-02880, Betsy Sachs and Brooke Sachs vs. Janney Montgomery Scott, LLC ("JMS"), filed in

2012 (the “Prior Arbitration”) and (2) in a matter filed in 2017 with the Rhode Island Department of Business Regulation, In the Matter of Betsy Sachs and Brooke Sachs, Complainants, v. Janney Montgomery Scott, LLC, and Whitney Boucher, Respondents, DBR No. 17SC001 (the “DBR Matter”). In the current arbitration, Claimant is alleging the same claims and issues, with respect to the same portfolio and conduct, as those addressed in the Prior Arbitration and in the DBR Matter. Because failure to supervise claims were raised in each of the prior matters, McKenna’s actions in supervising Boucher and Claimant’s account were at issue in both matters.

2. The Current Claim and the Prior Matters Are Against the Same Party:

The Prior Arbitration and the DBR Matter were each based upon respondeat superior liability for alleged negligent or intentional acts of JMS’ employees, Boucher and McKenna. Their conduct was directly at issue in both actions. Boucher and McKenna share a sufficient commonality of interest with JMS regarding Claimant’s claims concerning the transactions in her JMS account and the supervision of Boucher and Claimant’s JMS account to be deemed in privity with JMS. Because Boucher and McKenna are in privity with JMS, naming them individually as Respondents in the current arbitration is identical to naming JMS as a Respondent.

3. The Prior Matters Were Fully and Finally Adjudicated on the Merits and Were Memorialized in an Award or Decision:

Both the Prior Arbitration and the DBR matter have been fully and finally adjudicated on the merits. The Prior Arbitration was heard by a Panel of three arbitrators during evidentiary hearings on the merits in 2014. Claimant, Boucher and McKenna each testified during those evidentiary hearings and were cross-examined by Claimant’s counsel. The Panel found in favor of Claimant in the amount of \$35,820.58 and issued an Award dated May 20, 2014. FINRA subsequently advised Claimant of her right to file a motion to vacate the Award in federal or state court. Claimant did not move to vacate or challenge the Award in court. Instead, she cashed JMS’ check for payment of the amount awarded by the Panel. A hearing in the DBR matter was held in 2018. Claimant and Boucher testified at the hearing, and Claimant cross-examined Boucher. At the conclusion of the hearing, the Hearing Officer dismissed the case, finding that Boucher did not violate Rhode Island securities laws and that JMS did not violate Rhode Island securities laws or FINRA’s supervisory rule, Rule 3110, in connection with JMS’ supervision of Boucher. In the Hearing Officer’s Decision, the Hearing Officer found that there was no evidence of unsuitable products, excessive trades, or unsuitable sales resulting in unreasonable commissions. The Decision provided Claimant with notice of her right to appeal to the Providence County Superior Court within 30 days of the Decision, but she declined to do so.

The Panel denied Boucher and McKenna’s request that the Panel sanction Claimant by ordering her to pay their attorneys’ fees and costs.

On January 18, 2022, Boucher and McKenna withdrew their request for expungement. Therefore, the Panel made no determination with respect to Boucher and McKenna’s expungement request.

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

AWARD

After considering the pleadings, the Motion to Dismiss and all responses thereto, and the arguments presented during the recorded pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed with prejudice pursuant to Rule 12504 of the Code.

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	= \$ 1,425.00
Boucher's Expungement Filing Fee	= \$ 1,575.00
McKenna's Expungement Filing Fee	= \$ 1,575.00

**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimant's filing fee of \$1,425.00. Upon conclusion of the matter, the Panel determined to waive the \$300.00 non-refundable portion of the fee.

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as Boucher and McKenna's firm, Janney Montgomery Scott LLC is assessed the following:

Member Surcharge	= \$ 1,700.00
Member Process Fee	= \$ 3,750.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	= \$ 200.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed the total discovery-related motion fees to Claimant.

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: July 19, 2021	1 session
January 11, 2022	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 to Claimant.

The Panel has assessed \$1,125.00 hearing session fees jointly and severally to Boucher and McKenna.

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

ARBITRATION PANEL

Paul A. Auerbach	-	Public Arbitrator, Presiding Chairperson
Thomas M. Madden	-	Public Arbitrator
Mark Andrew Helman	-	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

Paul A. Auerbach

Paul A. Auerbach
Public Arbitrator, Presiding Chairperson

01/24/2022

Signature Date

Thomas M. Madden

Thomas M. Madden
Public Arbitrator

01/24/2022

Signature Date

Mark Andrew Helman

Mark Andrew Helman
Non-Public Arbitrator

01/21/2022

Signature Date

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January 25, 2022

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