

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Caswell

Case Number: 21-00563

vs.

Respondents
SW Financial, Inc.,
Bruce Boyle,
Thomas Diamante,
Lawrence Arnold Zelin,
Lawrence John Fawcett, Jr.,
Angia Holdings, LLC,
TJD Capital, LLC, and
Woodbury Capital, Inc.

Hearing Site: Des Moines, Iowa

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, Associated Persons, and Non-Members

REPRESENTATION OF PARTIES

For Claimant Robert Caswell (“Claimant”): Kevin P. Krupnick, Esq., The Krupnick Firm, Glen Cove, New York. *

For Respondents SW Financial, Inc. (“SW Financial”), Bruce Boyle (“Boyle”), Thomas Diamante (“Diamante”), and Lawrence Arnold Zelin (“Zelin”), (hereinafter, collectively referred to as “Respondents”): Charles M. O'Rourke, Esq., Charles M. O'Rourke, Esq., Woodbury, New York.

Respondent Lawrence John Fawcett, Jr. (“Fawcett”) did not enter an appearance in this matter.

Respondent Angia Holdings, LLC (“Angia Holdings”) did not enter an appearance in this matter.

Respondent TJD Capital, LLC (“TJD Capital”) did not enter an appearance in this matter.

Respondent Woodbury Capital, Inc. (“Woodbury”) did not enter an appearance in this matter.

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

CASE INFORMATION

Statement of Claim filed on or about: March 2, 2021.

Reply to Statement of Answer and Counterclaim ("Reply") filed on or about: June 7, 2021.

Claimant signed the Submission Agreement: March 26, 2021.

Statement of Answer and Counterclaim filed by Respondents on or about: May 24, 2021.

Respondents signed the Submission Agreements: April 15, 2021.

Fawcett, Angia Holdings, TJD Capital, and Woodbury 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: suitability, churning, unauthorized trading, fraud, negligent misrepresentation, violations of securities law, breach of fiduciary duty/breach of covenants of good faith and fair dealing, negligent supervision, breach of contract, Section 20 violations, failure to supervise, common law negligence, and unjust enrichment. The causes of action related to allegations that Respondent failed to adhere to basic duties when opening, administering, and supervising Claimant's brokerage accounts.

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondents denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and alleged that Claimant filed a frivolous claim against Boyle, Diamante, and Zelin to unjustly cause them to go through the expungement process.

Unless specifically admitted in the Reply to Statement of Answer and Counterclaim, Claimant denied the allegations made in the Statement of Answer and Counterclaim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested \$40,050.25 in compensatory damages or an amount to be more fully ascertained by discovery, inclusive of punitive damages; unjust enrichment/disgorgement of commissions and fees; reasonable attorneys' fees; costs of bringing this arbitration claim, including expert and witness fees; and such other further and different relief that the Arbitrator may deem appropriate.

In the Statement of Answer and Counterclaim, Respondents requested that all claims be dismissed. In the Counterclaim, Boyle, Diamante, and Zelin requested their defenses costs and the costs and expenses of removing and expunging this incident from their licenses, estimated to be \$30,000.00.

In the Reply, Claimant requested that the Arbitrator grant all the relief demanded in the Statement of Claim; sanction Respondents and require them to pay \$1,875.00 for Claimant having to respond to the allegations; and such other relief as the Arbitrator deems just and proper under the circumstances.

Boyle, Diamante, and Zelin filed a request for expungement of all references to this matter from 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 Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Angia Holdings, TJD Capital, and Woodbury are not members or associated persons of FINRA and did not voluntarily submit to arbitration. Therefore, the Arbitrator made no determination with respect to the claims against Angia Holdings, TJD Capital, and Woodbury.

Fawcett did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”).

Fawcett did not file a Statement of Answer. The Arbitrator determined that Fawcett was served with the Claim Notification letter dated April 5, 2021 by regular mail and Federal Express, as evidenced by the Federal Express tracking information available online, and the Overdue Notice (including the Statement of Claim) dated May 26, 2021 by regular mail.

The Claim Notification letter notified Fawcett that FINRA rules require parties to use the online DR Portal on a mandatory basis (except pro se investors) and that failure to register for the DR Portal will prevent the submission of pleadings, selection of arbitrators, and receipt of notification relating to case information and deadlines. Fawcett failed to register for the DR Portal.

The Arbitrator determined that Fawcett is, therefore, bound by the Arbitrator’s ruling and determination.

On July 30, 2021, Boyle, Diamante, and Zelin filed a Motion to Dismiss Pursuant to Rule 12504(a)(6)(B) of the Code.

On August 6, 2021, Claimant filed a Stipulation as to Dismissal with Prejudice of Respondents Boyle, Diamante, and Zelin. Therefore, the Arbitrator made no determination with respect to any of the relief requests against Boyle, Diamante, and Zelin.

On August 11, 2021 Boyle, Diamante, and Zelin withdrew the Motion to Dismiss.

On August 12, 2021, Claimant filed a voluntary notice of settlement with respect to SW Financial. Therefore, the Arbitrator made no determination with respect to any of the relief requests against SW Financial.

On August 17, 2021, Claimant filed a Motion for Default Proceedings and Preclusion against Fawcett (“Motion for Default”). On September 10, 2021, the Director of FINRA Dispute Resolution Services granted Claimant’s Motion for Default pursuant to Rule 12801 of the Code. Accordingly, all claims against Fawcett will proceed under a separate FINRA arbitration case.

On November 18, 2021, Boyle, Diamante, and Zelin filed a Motion for Expungement, to which no response was filed.

The Arbitrator conducted a recorded, telephonic hearing on December 23, 2021, so the parties could present oral argument and evidence on Boyle's, Diamante's, and Zelin's request for expungement.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Arbitrator reviewed Boyle's, Diamante's, and Zelin's BrokerCheck® Reports. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

The Arbitrator 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 Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Boyle, Diamante, and Zelin did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: testimony of Boyle, Diamante, and Zelin; the pleadings; and Boyle's, Diamante's, and Zelin's BrokerCheck® Reports.

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. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Numbers 2163907, 2163905, and 2163906) from registration records maintained by the CRD, respectively, for Respondents Bruce Boyle (CRD Number 1796066), Thomas Diamante (CRD Number 1645257), and Lawrence Arnold Zelin (CRD Number 1655034), with the understanding that, pursuant to Notice to Members 04-16, Respondents Bruce Boyle, Thomas Diamante, and Lawrence Arnold Zelin 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.

With respect to Bruce Boyle, pursuant to Rule 12805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

With respect to Thomas Diamante and Lawrence Arnold Zelin, pursuant to Rule 12805 of the Code, the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

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

Exhibits to the Statement of Answer and Counterclaim filed by Respondents show that Claimant opened his account with SW Financial in March of 2015. The Statement of Claim lacks any detail as to what may have occurred thereafter that would give rise to liability. Claimant says only "...that he has no recollection of ever agreeing to some of the trades...." The positions and products at issue were never identified. Respondents' Statement of Answer and Counterclaim states that "[a]ll of the activity in Claimant's account took place in a six-month period in 2015. The account was thereafter closed." This statement was not rebutted in Claimant's Reply.

Boyle, Diamante, and Zelin all testified under oath and presented their respective BrokerCheck® Reports.

Boyle began his employment with SW Financial in November of 2019 and said he has never heard of Claimant.

Diamante has been the Chief Executive Officer of SW Financial since 2007. As such, he has never had any sales or sale-supervisory duties.

Zelin began working for SW Financial in August of 2015. He is the Financial Operations Principal with exclusively financial and accounting duties. He has never been involved in sales or the supervision of sales.

As to Boyle, the application of Rule 2080(b)(1)(A) is obvious for the reason stated in his motion. Occurrence Number 2163907 should be expunged from his record because it is impossible for him to have been involved in a transaction at SW Financial during March-September of 2015.

Rule 2080(b)(1)(B) applies to Diamante (Occurrence Number 2163905) and Zelin (Occurrence Number 2163906). Both had duties and responsibilities totally unrelated to sales or supervision of sales and both testified that they were not involved in the transactions at issue. Zelin is also aided by the fact that his tenure with SW Financial overlaps the time period at issue by only one month. I find that neither one was involved with any of the transactions at issue.

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	= \$	600.00
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, SW Financial is assessed the following:

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

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:

One (1) pre-hearing session @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: July 28, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: December 23, 2021	1 session	
Total Hearing Session Fees	= \$	1,575.00

The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$225.00 of the hearing session fees jointly and severally to Respondents and Fawcett.

The Arbitrator has assessed \$375.00 of the hearing session fees to Boyle.

The Arbitrator has assessed \$375.00 of the hearing session fees to Diamante.

The Arbitrator has assessed \$375.00 of the hearing session fees to Zelin.

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

ARBITRATOR

Jonathan B. Gilbert

-

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

Jonathan B. Gilbert

Jonathan B. Gilbert
Sole Public Arbitrator

01/10/2022

Signature Date

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.

January 10, 2022

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