

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

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In the Matter of the Arbitration Between:

Claimants

Donald Murray  
and Patricia Murray

Case Number: 21-00844

vs.

Respondents

Cetera Advisor Networks LLC f/k/a  
Summit Brokerage Services, Inc.,  
Steven Charles Enders and  
Kimberly Joanne Crichton Enders

Hearing Site: Detroit, Michigan

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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: Customers vs. Members and Associated Persons

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Donald Murray and Patricia Murray (“Claimants”): Dietrich P. Epperson, Esq., Epperson & Greenidge, PA, Media, Pennsylvania. \*

For Respondents Cetera Advisor Networks LLC (“Cetera”) f/k/a Summit Brokerage Services, Inc. (“Summit”), Steven Charles Enders (“S. Enders”) and Kimberly Joanne Crichton Enders (“K. Enders”) (collectively, “Respondents”): Samuel P. Mauch, Esq., Saretsky Hart Michaels + Gould PC, Birmingham, Michigan.

\*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 30, 2021.  
Claimants signed the Submission Agreement: March 30, 2021.

Statement of Answer filed on or about: August 5, 2021.  
Cetera and Summit did not sign the Submission Agreement.

S. Enders signed the Submission Agreement: August 27, 2021.  
K. Enders signed the Submission Agreement: August 9, 2021.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: violations of 10(b) and 10b-5 of the Securities Exchange Act of 1934, breach of express/implied contract and breach of duty of good faith and fair dealing, negligent misrepresentations/omissions, negligence and/or gross negligence, respondeat superior, failure to supervise, and violations of Michigan Uniform Securities Act MLC §§ 451.2501 and 451.2509. The causes of action relate to Claimants' allegations that Respondents invested their money in American Realty Capital Hospitality Trust, Inc. n/k/a Hospitality Investors Trust, Inc. ("ARC Hospitality"), a risky, speculative security, which was unsuitable for their investment needs and inconsistent with their investor profiles.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested a judgment against Respondents as follows:

- a. Awarding of compensatory damages for all damages sustained as a result of the Respondents' wrongdoing for an amount determined at final hearing, approximately \$50,000.00 in the alternative well-managed portfolio damages, as well as pre-judgment interest;
- b. For interest to run until the date that the award is fully paid and satisfied by Respondents;
- c. Awarding of fees, commissions and compensation earned from Claimants' investment;
- d. Awarding Claimants all reasonable attorneys' fees, expenses and costs, including experts' fees;
- e. Awarding rescission or a recessionary measure of damages; and
- f. Awarding such additional equitable/injunctive or other relief as deemed appropriate by the Arbitrator.

In the Statement of Answer, Respondents requested that Claimants' claims be denied and all references to this matter be expunged from S. Enders' and K. Enders' Central Registration Depository ("CRD") registration records.

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

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

Cetera and Summit did not file a properly executed Submission Agreement but are required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the claim, are bound by the determination of the Arbitrator on all issues submitted.

On September 9, 2021, Claimants and Respondents filed a voluntary joint stipulation of dismissal with prejudice and requested that the arbitration case remain open for S. Enders and K. Enders to pursue expungement. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On December 7, 2021, Claimants filed correspondence stating that they do not oppose S. Enders’ and K. Enders’ request for expungement.

The Arbitrator conducted a recorded hearing by videoconference on December 14, 2021, so that S. Enders and K. Enders could present oral argument and evidence on their request for expungement.

Claimants, through counsel, participated in the expungement hearing and did not oppose the request for expungement.

The Arbitrator reviewed S. Enders’ and K. Enders’ BrokerCheck® Reports. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in their CRDs.

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 S. Enders’ and K. Enders’ did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: S. Enders’ and K. Enders’ testimonies; Respondents’ Exhibits 1, 3-4, 8-12, 14, and 16-22; and December 7, 2021 correspondence from Claimants’ counsel.

### **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 as follows: Occurrence Number 2126757 from registration records maintained by the CRD for Respondent Steven Charles Enders (CRD Number 1067700) and Occurrence Number 2126513 from registration records maintained by the CRD for Respondent Kimberly Joanne Crichton Enders (CRD Number 2622102), with the understanding that, pursuant to Notice to Members 04-16, Respondents Steven Charles Enders and Kimberly Joanne

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

S. Enders and K. Enders began working with Claimants in 2008. Claimants initially purchased several variable annuities through S. Enders. In 2015, Claimants were interested in investment opportunities that were not correlated to the stock market. S. Enders and K. Enders prepared a financial plan addressing Claimants' needs, including their desire to decrease their market exposure.

In May 2015, Claimant and K. Enders met. K. Enders did fact-finding that covered Claimants' plans for retirement, how much risk was in their portfolio, their sources of income, and annual expenses.

K. Enders met with Claimants in July 2015 and proposed alternatives. They discussed prospective investment products for Claimants to consider adding to their portfolio, including additional variable annuities, which could offer some market participation but limit downside risk; mutual funds that would provide exposure to diverse asset classes; and real estate investments trusts ("REITs") that were not correlated to the stock market and offered the opportunity for growth and income.

K. Enders recommended the REIT at-issue, ARC, and another REIT offered by ARC's sponsor as investment options for Claimants. The ARC-sponsored REITs were approved for sale by their broker-dealer. S. Enders and K. Enders performed their own due diligence of the investments.

During the July 2015 meeting, the risks of the potential REIT investments were discussed. K. Enders provided investment materials to Claimants so they could study them. In October 2015, Claimants made the decision to invest additional money with Respondents. K. Enders reiterated the risks associated with REIT investments and provided Claimants with materials that further memorialized these risks. The Claimants' investment in ARC was finalized on or about November 12, 2015.

According to the testimony of S. Enders and K. Enders, while alternative investments are often critiqued for their limited liquidity features, they are generally used to provide diversification to an investor's portfolio and are not correlated to the stock market, which makes them complementary to investments that have market exposure, like mutual funds

and variable annuities. It was not unsuitable to recommend an investment in a REIT to someone of the Claimants' age, financial profile, limited liquidity needs, and high net worth. The applications and the investment profile signed by the Claimants acknowledged that they had limited liquidity needs, a 20-year investment horizon and an investment objective of moderate growth. Their investment profile made them suitable investors for ARC.

The Claimants were informed investors. They signed risk disclosures for their investment in ARC that evidenced their understanding that the investment was illiquid, not publicly traded, and subject to a long holding period.

The COVID-19 pandemic negatively impacted ARC, which was invested in the hospitality industry. The REIT suspended its distributions to investors and sought bankruptcy protection in 2021. Claimants received some distribution payments before the REIT suspended income payments to investors.

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
Expungement 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 parties, Cetera and Summit are each 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 @ \$1,125.00/session	= \$ 1,125.00
Pre-Hearing Conference: September 14, 2021      1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: December 14, 2021      1 session	

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Total Hearing Session Fees = \$ 2,250.00

The Arbitrator has assessed the total hearing session fees jointly and severally to K. Enders and S. Enders.

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

**ARBITRATOR**

Lee Hornberger

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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**

***Lee Hornberger***

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Lee Hornberger  
Sole Public Arbitrator

**12/18/2021**

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Signature Date

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December 20, 2021

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