

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Craig E. O'Neill, Marsha M. O'Neill, and
Sheila Dwyer Schwartz

Case Number: 19-00440

vs.

Respondents

McDonald Partners, LLC and
Thomas M. McDonald

Hearing Site: Cleveland, Ohio

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. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimants Craig E. O'Neill ("C. O'Neill"), Marsha M. O'Neill ("M. O'Neill"), and Sheila Dwyer Schwartz ("Schwartz"), collectively, "Claimants": Chad M. Kohler, Esq. and David P. Meyer, Esq., Meyer Wilson Co., LPA, Columbus, Ohio.

For Respondents McDonald Partners, LLC ("McDonald Partners") and Thomas M. McDonald ("McDonald"), collectively, "Respondents": Michael A. Gross, Esq., Ulmer & Berne LLP, Boca Raton, Florida and Michael J. Charlillo, Esq., Ulmer & Berne LLP, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed by Claimants on or about: February 8, 2019.

Amended Statement of Claim filed by Claimants on or about: July 30, 2020.

Second Amended Statement of Claim filed by Schwartz on or about: September 29, 2020.

Claimants signed the Submission Agreement: February 7, 2019.

Statement of Answer filed on or about: May 3, 2019.

Statement of Answer to Second Amended Statement of Claim filed on or about: October 29, 2020.

Respondents signed the Submission Agreements: March 1, 2019.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violations of the Ohio Securities Act, negligence, breach of contract, breach of fiduciary duty, and fraud. The causes of action related to Claimants' allegation that Respondents willfully lied to them and other investors in connection with a "part-or-none" securities offering in Eden Rock Montenegro, LLC, in which McDonald Partners acted as the exclusive placement agent.

In the Amended Statement of Claim, Claimants reasserted the previous causes of action. Claimants added an allegation that Schwartz suffered a near total loss of her investment in GPB Holdings II, LP, which was managed by GPB Capital Holdings, LLC and part of a Ponzi scheme.

In the Second Amended Statement of Claim, Schwartz reasserted the causes of action in the Amended Statement of Claim and her allegations remained the same.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested rescission of the sale of the investment and return of the full amount paid for the securities at issue, approximately \$600,000.00, or, alternatively, an award of damages of said amount plus all taxable costs; pre- and post-judgment interest at the legal rate; attorneys' fees; costs of arbitration, including FINRA filing fees, expert witness fees, arbitrator fees, and all forum fees and expenses; punitive damages in an amount to be determined at the hearing; and such other and any further relief as the Panel deems just, proper, and equitable.

In the Amended Statement of Claim, Claimants reasserted the previous relief request but provided a value of approximately \$650,000.00 as the full amount paid for the securities at issue.

In the Second Amended Statement of Claim, Schwartz reasserted the previous relief request but provided a value of approximately \$550,000.00 as the full amount paid for the securities at issue.

In the Statement of Answer, as amended, Respondents requested that all claims against them be dismissed and expungement of all references to this matter from Central Registration Depository ("CRD") registration records for McDonald and Unnamed Party Rita Mansour ("Mansour").

At the hearing, Schwartz requested a total of \$1,041,447.00, including rescission of \$550,580.00, costs of \$26,360.00, and attorneys' fees of \$364,506.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 30, 2020, Claimants filed an Unopposed Motion for Leave to Amend Statement of Claim ("First Motion to Amend"). In an Order dated August 6, 2020, the Panel granted the First Motion to Amend.

On September 29, 2020, Schwartz filed an Unopposed Motion for Leave to File a Second Amended Statement of Claim ("Second Motion to Amend"). In an Order dated October 9, 2020, the Panel granted the Second Motion to Amend.

On November 2, 2020, Claimants filed notice that C. O'Neill and M. O'Neill had fully resolved all claims at issue with Respondents and dismissed their claims with prejudice. Therefore, the Panel made no determination with respect to any of C. O'Neill and M. O'Neill's relief requests.

The Panel considered Respondents' request for expungement on behalf of McDonald and Mansour as part of the recorded evidentiary hearing conducted in this matter conducted in person and by videoconference. Schwartz opposed Respondents' request for expungement on behalf of McDonald and Mansour.

During the hearing, Respondents moved to dismiss all claims asserted, based on timeliness ("Motion to Dismiss"). Schwartz opposed the Motion to Dismiss. On the record, the Panel denied the Motion to Dismiss.

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:

1. Respondents are jointly and severally liable for and shall pay to Schwartz the sum of \$160,000.00 in compensatory damages.
2. Within 30 days of the date of the Award, Schwartz shall execute all paperwork necessary to effectuate the transfer to McDonald Partners of shares in Eden Rock Montenegro, LLC with a total cost value of \$200,000.00.
3. Respondents' request for expungement of the above-captioned arbitration (Occurrence Numbers 2029075 and 2080395) from registration records maintained by the CRD for McDonald and Mansour is denied.
4. 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 of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	=\$ 1,725.00
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**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, McDonald Partners is assessed the following:

Member Surcharge	=\$ 2,475.00
Member Process Fee	=\$ 5,075.00

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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Respondents submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	=\$ 200.00
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The Panel has assessed \$160.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$40.00 of the discovery-related motion fees jointly and severally to Respondents.

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:

Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session	=\$ 2,600.00
Pre-Hearing Conferences: June 11, 2019	1 session
November 9, 2020	1 session

Ten (10) hearing sessions @ \$1,300.00/session	=\$ 13,000.00
Hearings:	
August 23, 2021	2 sessions
August 24, 2021	2 sessions
August 25, 2021	2 sessions
August 26, 2021	2 sessions

August 27, 2021	1 session
September 21, 2021	1 session

Total Hearing Session Fees	= \$ 15,600.00
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The Panel has assessed \$7,150.00 of the hearing session fees jointly and severally to Schwartz.

The Panel has assessed \$650.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$7,800.00 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Kevin Brodar	-	Public Arbitrator, Presiding Chairperson
James Dale Ellis	-	Public Arbitrator
Carol Jean Bader	-	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

Kevin Brodar

Kevin Brodar
Public Arbitrator, Presiding Chairperson

10/12/2021

Signature Date

James Dale Ellis

James Dale Ellis
Public Arbitrator

10/12/2021

Signature Date

Carol Jean Bader

Carol Jean Bader
Public Arbitrator

10/08/2021

Signature Date

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October 12, 2021

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