

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Robert Crane

Case Number: 19-02155

vs.

Respondents
Wynston Hill Capital, LLC,
Robert Joseph Calamunci, Sr.,
Craig Jay Sherman,
Christopher Joseph Nelson, and
Joseph Morris Thurnherr

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 and Associated Persons

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Robert Crane (“Claimant”): Daniel D’Costa, Esq., D’ Costa Law, P.C., Hicksville, New York.

For Respondents Wynston Hill Capital, LLC (“Wynston Hill”) and Robert Joseph Calamunci, Sr. (“Calamunci”): Paul Goodman, Esq., Cyruli Shanks Hart & Zizmor, LLP, New York, New York.

For Respondent Craig Jay Sherman (“Sherman”): David A. Allen, Esq., Allen & Thomas, LLP, New York, New York.

Respondent Christopher Joseph Nelson (“Nelson”) appeared pro se.

Respondent Joseph Morris Thurnherr (“Thurnherr”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: August 1, 2019.

Claimant signed the Submission Agreement: August 1, 2019.

Statement of Answer filed by Wynston Hill, Calamunci, and Sherman on or about: September 27, 2019.

Wynston Hill, Calamunci, and Sherman did not sign the Submission Agreement.

Statement of Answer filed by Nelson on or about: February 7, 2020.

Nelson did not sign the Submission Agreement.

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

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: unsuitability, wrongful over-concentration, unauthorized trading, fraud, failure to supervise, and respondeat superior. The causes of action related to Claimant's allegation that Wynston Hill failed to supervise the brokers and employees involved in handling Claimant's account. Claimant further alleged that Thurnherr, the broker handling his account, was not registered in Claimant's state of residency and used the registration of another person to execute transactions in Claimant's account. Finally, Claimant alleged that Wynston Hill, Calamunci, Sherman, Nelson, and Thurnherr are responsible for the unsuitable and unauthorized trades in his account, including investments in Amarin Corp. PLC ADR CALL, Proshares Ultra VIX Short Term Futures ETF, Health Insurance Innovation, NII Holdings Inc., and Square, Inc.

Unless specifically admitted in the Statement of Answer, Wynston Hill, Calamunci, and Sherman denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in the Statement of Answer, Nelson denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award of \$314,852.00 for total losses sustained in the account, punitive damages, and costs incurred in the filing and prosecution of this matter.

In the Statement of Answer, Wynston Hill, Calamunci, and Sherman requested that the Statement of Claim be denied in its entirety.

In the Statement of Answer, Nelson did not request any relief.

At the hearing, Claimant withdrew the unauthorized trading cause of action and requested an award as follows:

- a. Actual/compensatory damages of \$314,852.15 in investment losses;
- b. Disgorgement of \$161,824.70 in ill-gotten commissions, fees, and interest charges;
- c. Punitive/treble damages of three times the total damages sought, as deemed appropriate by the Panel;
- d. Findings of fraud against Wynston Hill, Calamunci, Sherman, and Thurnherr;
- e. Repayment of the interest and fees paid by Claimant on the \$300,000.00 loan used to fund his account at Wynston Hill;
- f. Discovery sanctions against Wynston Hill, Calamunci, and Sherman;

- g. Interest on all of the above amounts as provided by law;
- h. Reimbursement for legal fees in the amount of \$40,000.00;
- i. Reimbursement of FINRA forum and filing fees, estimated to be \$15,000.00 - \$20,000.00;
- j. Expert witness fees of \$1,500.00; and
- k. Any and all further relief as deemed appropriate by the Panel.

At the hearing, Calamunci and Sherman requested expungement of all reference to this matter from their records maintained by the Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

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

Wynston Hill, Calamunci, Sherman, and Nelson did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared, and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Thurnherr did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code.

Thurnherr also did not file a Statement of Answer. The Panel determined that Thurnherr was served with the Claim Notification letter dated August 2, 2019 and September 11, 2019 by regular mail.

The Claim Notification letter notified Thurnherr 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. Thurnherr failed to register for the DR Portal. The Panel determined that Thurnherr is, therefore, bound by the Panel's ruling and determination.

On December 7, 2020, Claimant filed an Omnibus Motion, which included a Motion to Bar Defenses and Request for Default Proceedings Against Thurnherr; Motion for Discovery Sanctions Against Wynston Hill, Calamunci, Sherman, Nelson, and Thurnherr; and Motion to Dismiss the Defenses of Wynston Hill, Calamunci, Sherman, Nelson, and Thurnherr. No response was filed. On January 12, 2021, the Panel heard oral arguments on the Omnibus Motion. In an Order dated the same day, the Panel held the motions in abeyance and provided directions regarding the filing of separate motions.

On February 19, 2021, Claimant filed a Request to Reinstate Motions Held in Abeyance, to which no response was filed.

On March 18, 2021, the Panel heard oral arguments on the motions held in abeyance. Claimant withdrew his Motion for Sanctions against Nelson, without prejudice. Wynston Hill, Calamunci, and Sherman made an oral motion for leave to file a motion to compel and for sanctions. In an Order dated March 19, 2021, the Panel conditionally denied Claimant's Motion for Sanctions against Wynston Hill, Calamunci, and Sherman, contingent on the submission of an affidavit; denied Wynston Hill, Calamunci, and Sherman's oral motion for leave to file a motion to compel

and for sanctions; and denied the Motion for Default Proceedings against Thurnherr without prejudice.

On March 26, 2021, Claimant filed a Renewed Motion for Default against Thurnherr ("Renewed Motion for Default"), to which no response was filed. In an Order dated April 19, 2021, the Panel deferred ruling on the Renewed Motion until the final hearing.

Thurnherr did not appear at the evidentiary hearing.

During the evidentiary hearing, Wynston Hill and Calamunci, jointly, and Sherman, individually, made oral motions to dismiss. Calamunci and Sherman argued that there was no proof that they were in supervisory positions at Wynston Hill. Claimant stipulated to the dismissal of claims against Calamunci and Sherman and dismissed Nelson with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim as to Calamunci, Sherman, or Nelson. Wynston Hill argued that the entire case was null and void because it was originally filed by a non-attorney. Further, it argued that Claimant failed to authenticate materials its expert relied on and failed to move to enter critical evidence, leaving the Panel with no basis upon which a decision could be made. The Panel denied Wynston Hill's motion to dismiss.

Also, during the evidentiary hearing, Calamunci and Sherman made oral requests for expungement. Claimant did not oppose Calamunci's and Sherman's requests for expungement.

The Panel reviewed Calamunci and Sherman's BrokerCheck® Reports. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrences in the CRD.

In recommending expungement for Calamunci and Sherman, the Panel relied upon the following documentary or other evidence: the testimony elicited at the evidentiary hearing and the representation that Claimant did not oppose 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:

1. Wynston Hill and Thurnherr are jointly and severally liable for and shall pay to Claimant the sum of \$476,676.85, which includes \$314,852.15 in compensatory damages and \$161,824.70 in commissions, fees, and interest charges.
2. Wynston Hill and Thurnherr are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 2% per annum from August 1, 2019 through and including the date the Award is paid in full.
3. Wynston Hill and Thurnherr are jointly and severally liable for and shall pay to Claimant the sum of \$1,500.00 in costs for expert witness fees.

4. Wynston Hill and Thurnherr are jointly and severally liable for and shall pay to Claimant the sum of \$300.00 in costs as reimbursement for the non-refundable portion of the filing fee Claimant previously paid to FINRA Dispute Resolution Services.
5. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Numbers 2061068 and 2091403) from registration records maintained by the CRD for Respondent Robert J. Calamunci, Sr. (CRD Number 1618899) and Craig J. Sherman (CRD Number 5670193) with the understanding that, pursuant to Notice to Members 04-16, Respondents Robert J. Calamunci, Sr. and Craig J. Sherman 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 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 Panel has made the above Rule 2080 finding based on the following reasons:

The evidence presented at the evidentiary hearing did not support the claim that either Calamunci or Sherman were in a supervisory position over Thurnherr, which was the basis of their alleged liability.

6. 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	= \$ 1,425.00
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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, Wynston Hill is assessed the following:

Member Surcharge	= \$ 1,900.00
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Member Process Fee = \$ 3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

April 26-28, 2021, postponement requested by Wynston Hill = \$ 1,125.00

Total Postponement Fees = \$ 1,125.00

The Panel has assessed the total postponement fees to Wynston Hill.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

April 26-28, 2021, cancellation requested by Wynston Hill = \$ 1,800.00

Total Last-Minute Cancellation Fees = \$ 1,800.00

The Panel has assessed the total last-minute cancellation fees to Wynston Hill.

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 a single Arbitrator @ \$450.00/session = \$ 450.00
Pre-Hearing Conference: June 11, 2020 1 session

Four (4) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 4,500.00
Pre-Hearing Conferences: January 7, 2020 1 session
July 21, 2020 1 session
January 12, 2021 1 session
March 18, 2021 1 session

Six (6) hearing sessions @ \$1,125.00/session = \$ 6,750.00
Hearings: April 26, 2021 1 session
June 21, 2021 2 sessions
June 22, 2021 2 sessions
June 23, 2021 1 session

Total Hearing Session Fees = \$ 11,700.00

The Panel has assessed the total hearing session fees jointly and severally to Wynston Hill and Thurnherr.

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

ARBITRATION PANEL

Avery B. Goodman	-	Public Arbitrator, Presiding Chairperson
Mark A. Frankel	-	Public Arbitrator
David Evans Rosedahl	-	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

Avery B. Goodman

Avery B. Goodman
Public Arbitrator, Presiding Chairperson

08/16/2021

Signature Date

Mark A. Frankel

Mark A. Frankel
Public Arbitrator

08/16/2021

Signature Date

David Evans Rosedahl

David Evans Rosedahl
Non-Public Arbitrator

08/17/2021

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.

August 17, 2021

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