

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

---

In the Matter of the Arbitration Between:

Claimants

Case Number: 19-03839

Richard Dawalt  
Lannie Devin  
Willard N. Grummert  
Robert T. Lowman  
Marilyn A. Martinson, IRAs  
Larry L. Marple  
David Petterson  
Robert R. Reichle  
Michael Shain  
Walter Walker Investment Co. Ltd.

vs.

Respondents

Hearing Site: Seattle, Washington

First Standard Financial Company LLC  
Carmine Anthony Berardi  
Levert Caldwell  
Andre Pierre Davis  
William Christian Gennity  
Joshua Jason Kaikov  
Michael Leahy  
Daniel Joseph Marsillo  
Daniel Anthony Montesano  
Matthew Ross  
Rocco Roveccio  
Jamal Hiram Sampson  
Philip Joseph Sparacino

---

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 Persons

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Richard Dawalt (“Dawalt”), Lannie Devin (“Devin”), Willard N. Grummert (“Grummert”), Robert T. Lowman (“Lowman”), Marilyn A. Martinson (“Martinson”), Larry L. Marple (“Marple”), David Petterson (“Petterson”), Robert R. Reichle (“Reichle”), Michael Shain (“Shain”), and Walter Walker Investment Co. Ltd. (“Walker”): Daniel D’Costa, Esq., D’Costa, Law, P.C., Hicksville, New York.

For Respondent First Standard Financial Company LLC (“First Standard”): Michael Leahy, CCO, First Standard Financial Company LLC, Red Bank, New Jersey.

Respondent Carmine Anthony Berardi (“Berardi”) appeared pro se.

Respondent Levert Caldwell (“Caldwell”) did not enter an appearance.

Respondent Andre Pierre Davis (“Davis”) appeared pro se.

Respondent William Christian Gennity (“Gennity”) did not enter an appearance.

Respondent Joshua Jason Kaikov (“Kaikov”) appeared pro se.

Respondent Michael Leahy (“Leahy”) appeared pro se.

Respondent Daniel Joseph Marsillo (“Marsillo”) did not enter an appearance.

Respondent Daniel Anthony Montesano (“Montesano”) did not enter an appearance.

Respondent Matthew Ross (“Ross”) did not enter an appearance.

Respondent Rocco Roveccio (“Roveccio”) did not enter an appearance.

Respondent Jamal Hiram Sampson (“Sampson”) appeared pro se.

Respondent Philip Joseph Sparacino (“Sparacino”) did not enter an appearance.

Hereinafter, Dawalt, Devin, Grummert, Lowman, Martinson, Marple, Petterson, Reichle, Shain, and Walker will collectively be referred to as “Claimants.”

Hereinafter, First Standard, Berardi, Caldwell, Davis, Gennity, Kaikov, Leahy, Marsillo, Montesano, Ross, Roveccio, Sampson, and Sparacino will collectively be referred to as “Respondents.”

### **CASE INFORMATION**

Statement of Claim filed on or about: March 5, 2020.

Claimants signed the Submission Agreement: March 2, 2020.

Statement of Answer filed by Kaikov on or about May 22, 2020.

Statement of Answer and Counterclaim filed by Berardi on or about: May 25, 2020.

Statement of Answer filed by First Standard, Davis, Ross, and Sampson on or about: June 11, 2020.

Berardi signed the Submission Agreement: May 22, 2020.  
Kaikov signed the Submission Agreement: June 1, 2020.  
Sampson signed the Submission Agreement: June 4, 2020.  
Leahy signed the Submission Agreement: September 14, 2020.  
First Standard, Caldwell, Davis, Gennity, Marsillo, Montesano, Ross, Roveccio, and Sparacino did not sign the Submission Agreement.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: negligence; qualitative and quantitative unsuitability; failure to supervise; breach of fiduciary duty; breach of contract; negligent misrepresentations; omissions; and lost opportunity damages. The causes of action relate to various unspecified securities.

In the Statement of Answer, Kaikov denied the allegations made in the Statement of Claim.

In the Statement of Answer and Counterclaims, Berardi denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Further, Berardi asserted the following causes of action: frivolous assertion of liability; tortious interference with contractual rights; and prima facie tort. The causes of action relate to various unspecified securities.

In the Statement of Answer, First Standard, Davis, Ross, and Sampson denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. An award against the Respondents that managed the accounts in the amount of out-of-pocket losses suffered as follows:

<b>Claimant</b>	<b>Losses</b>	<b>Costs</b>	<b>Respondent(s)</b>
Shain	\$146,599.00	\$42,640.00	Berardi, Sampson, Sparacino
Petterson	\$446,608.00	\$1,324,272.00	Caldwell, Davis, Kaikov, Montesano, Ross, Roveccio, Sparacino
Reichle	\$74,791.00	\$54,045.00	Caldwell, Davis, Kaikov, Ross, Sparacino
Marple	\$72,689.00	\$35,000.00	Davis, Sparacino
Walker	\$363,430.00	\$69,188.00	Davis
Martinson	\$19,916.00	\$29,768.00	Davis
Devin	\$200,000.00	TBD	Gennity, Sparacino
Lowman	\$10,293.00	\$55,000.00	Davis
Dawalt	\$6,500.00	TBD	Leahy
Grummert	\$22,197.00	\$11,922.00	Gennity, Marsillo, Sparacino
<b>Total</b>	<b>\$1,363,023.00</b>	<b>\$1,620,935.00</b>	

2. For each Claimant, an award holding First Standard, Berardi, Leahy and each

- Respondent who was handling their accounts, jointly and severally liable for the account losses, as each benefitted financially from the improper trades in each account;
3. Interest and/or lost opportunity damages for each Claimant; and
  4. Such other and further relief as the Panel may deem appropriate.

In the Statement of Answer, Kaikov did not set forth a specific relief request.

In the Statement of Answer and Counterclaims, Berardi requested:

1. All claims be denied against Berardi;
2. Compensatory damages of at least \$25,000.00;
3. Attorneys' fees and costs in connection with defending this matter; and
4. Any further relief that the Panel deems just and equitable.

In the Statement of Answer, First Standard, Davis, Ross, and Sampson requested that the Panel dismiss all claims with prejudice.

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

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

On April 17, 2020, Claimant filed a notice of dismissal for Montesano without prejudice.

On June 23, 2020, Claimant filed a notice of dismissal for Roveccio without prejudice.

On March 22, 2021, First Standard filed for bankruptcy under the United States Bankruptcy Code. In accordance with these filings, all claims against First Standard are indefinitely stayed. Therefore, the Panel made no determination with respect to the claims against First Standard.

On June 28, 2021, Claimant filed a notice of dismissal for Gennity with prejudice.

On October 13, 2021, Claimant filed a notice of dismissal for Ross with prejudice.

On October 4, 2021, Kaikov filed a Motion to Dismiss. On October 7, 2021, Claimant filed a response opposing the Motion to Dismiss. On October 11, 2021, Kaikov filed his reply in support of the motion. On October 14, 2021, Claimant filed a notice of dismissal for Kaikov with prejudice. As such, the motion was rendered moot.

On October 21, 2021, Claimant filed a notice of dismissal for Caldwell with prejudice.

On October 21, 2021, Claimant filed a notice of dismissal for Davis with prejudice.

On November 12, 2021, Claimant filed a notice of dismissal for Sampson with prejudice.

During the evidentiary hearing, Claimant dismissed Marsillo and Sparacino with prejudice.

Leahy did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Leahy received due notice of the hearing and that arbitration of the matter would proceed without Leahy present, in accordance with the Code of Arbitration Procedure ("Code").

On November 29, 2021, during the evidentiary hearing, the Panel was notified that Berardi had passed away. At Claimant's request, the Panel proceeded with the evidentiary hearing against Leahy and tentatively against Berardi. Proceeding against Berardi was contingent on the Panel's continuing authority to hear and resolve claims and counterclaims involving Berardi and/or his estate.

Following the evidentiary hearing, the Panel granted Claimants until December 10, 2021 to brief the question as to whether Berardi died, and if so, whether the Panel has authority to issue an award resolving claims and counterclaims involving Berardi and/or his estate.

In their brief, Claimants argue that FINRA and this Panel had jurisdiction over all Respondents, including Berardi, and all claims when this arbitration was initiated. The Panel agrees. Claimants argue that their claims against Berardi survive his death. The Panel agrees.

Claimants acknowledge that FINRA does not have jurisdiction over an estate unless the estate voluntarily submits to FINRA's jurisdiction. Nonetheless, Claimants urge the Panel not to stay this action against Berardi and/or his estate until his personal representative is appointed. Claimants argue that because Berardi specified relevant facts and available defenses in his Answer, he had ample opportunity to present his defenses prior to his passing. The Panel disagrees. Neither Berardi nor his estate had an opportunity to participate in the evidentiary hearing; neither had the opportunity to present evidence, to cross-examine Claimant's witnesses or to present oral argument.

FINRA rules provide no guidance on how to proceed when a party dies prior to an evidentiary hearing. As Claimants did not move to amend their pleadings to substitute Berardi with Berardi's estate, the Panel hereby does so, sua sponte.

Since neither Berardi nor his estate had an opportunity to participate in the evidentiary hearing, the Panel notes that a new evidentiary hearing will be required whether a Berardi estate representative appears and consents to FINRA jurisdiction or Claimants pursue their claims against the Berardi estate in a court of competent jurisdiction.

Accordingly, the Estate of Berardi and all claims and counterclaims involving the Estate of Berardi are hereby dismissed, without prejudice.

### **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. Leahy is liable for and shall pay sums totaling \$2,842,976.79 in compensatory damages to the various Claimants as outlined below:

Claimant	Net Loss	Costs	Total
Devin	\$32,844.27	\$5,247.00	<b>\$38,091.27</b>
Dawalt	\$3,564.22	\$810.00	<b>\$4,374.22</b>
Grummert	\$22,197.18	\$0.00	<b>\$22,197.18</b>
Lowman	\$8,530.99	\$62,372.59	<b>\$70,903.58</b>

Martinson (IRA)	\$18,021.25	\$22,589.14	<b>\$40,610.39</b>
Martinson (Roth IRA)	\$1,894.87	\$0.00	<b>\$1,894.87</b>
Petterson	\$446,607.51	\$1,358,487.54	<b>\$1,805,095.05</b>
Shain	\$146,598.90	\$42,505.46	<b>\$189,104.36</b>
Walker	\$363,429.63	\$72,857.27	<b>\$436, 286.90</b>
Reichle	\$74,791.13	\$52,900.85	<b>\$127,691.98</b>
Marple	\$72,690.13	\$34,036.86	<b>\$106,726.99</b>

2. Leahy is liable for and shall pay to Claimants interest on their respective compensatory damages sums at the rate of 1.5% per annum from December 10, 2021 through and including the date when the award is paid in full.
3. Leahy is liable for and shall pay to Claimants the sum of \$25,000.00 in costs to reimburse expert witness fees.
4. Leahy is liable for and shall pay \$600.00 to reimburse Claimants for the nonrefundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
5. Berardi's counterclaims are dismissed without prejudice.
6. Any and all claims for relief not specifically addressed herein, including any requests for 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	=\$ 2,000.00
Counterclaim Filing Fee	=\$ 600.00

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

#### **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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	=\$ 450.00
Pre-Hearing Conference: July 12, 2021 1 session	
One (1) pre-hearing session with the Panel @ \$1,400.00/session	=\$ 1,400.00
Pre-Hearing Conference: August 12, 2020 1 session	
Three (3) hearing sessions @ \$1,400.00/session	=\$ 4,200.00
Hearings: November 29, 2021 2 sessions	
November 30, 2021 1 session	

---

Total Hearing Session Fees	= \$ 6,050.00
----------------------------	---------------

The Panel has assessed the total hearing session fees to Leahy.

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

**ARBITRATION PANEL**

Joseph C. Roberts	-	Public Arbitrator, Presiding Chairperson
Christopher Keay	-	Public Arbitrator
Steven Phillip Caplow	-	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**

**Joseph C. Roberts**

Joseph C. Roberts  
Public Arbitrator, Presiding Chairperson

02/01/2022

Signature Date

**Christopher Keay**

Christopher Keay  
Public Arbitrator

02/01/2022

Signature Date

**Steven Phillip Caplow**

Steven Phillip Caplow  
Non-Public Arbitrator

01/31/2022

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.

February 02, 2022

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