

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

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In the Matter of the Arbitration Between:

Claimant

John M. Marmaduke, as Trustee of The John Mitchell Marmaduke Revocable Living Trust B Dtd 03/30/2009

Case Number: 18-02720

vs.

Respondent

Credit Suisse Securities (USA) LLC

Hearing Site: Boca Raton, Florida

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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: Customer vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant John M. Marmaduke, as Trustee of The John Mitchell Marmaduke Revocable Living Trust B Dtd 03/30/2009: Mark S. Simms, Esq., Simms Law, P.A., Fort Lauderdale, Florida.

For Respondent Credit Suisse Securities (USA) LLC: Allan N. Taffet, Esq. and Russell Gallaro, Esq., Bracewell LLP, New York, New York.

\*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: July 31, 2018.

John M. Marmaduke, as Trustee of The John Mitchell Marmaduke Revocable Living Trust B Dtd 03/30/2009 signed the Submission Agreement: July 31, 2018.

Statement of Answer filed by Respondent on or about: October 22, 2018.

Credit Suisse Securities (USA) LLC signed the Submission Agreement: October 22, 2018.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; and violation of Section 10(b) of the Securities Exchange Act and rule 10b-5 of the Securities and Exchange Commission. The causes of action relate to the purchase of hedge funds in Claimant's account, including but not limited to: the Credit Value Fund III, L.P.; Credit Suisse China Harvest III Feeder Fund, L.P.; and BlackGold Opportunity HedgeFocus Fund, L.P.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: compensatory damages between \$500,000.00 and \$1,000,000.00; well-managed portfolio damages; rescission; punitive damages; interest; costs; and such other and further relief this Panel deems just and proper.

In the Statement of Answer, Respondent requested: denial of the Statement of Claim in its entirety; costs and disbursements for defending this action, including attorneys' fees; and any further relief that the Panel deemed just and equitable.

At the hearing, Claimant requested damages in a range between \$975,523.00 and \$8,024,714.00 to be determined by the Panel.

At the hearing, Respondent requested expungement, on behalf of Unnamed Party Cees-Jan Van Hoek ("Van Hoek"), of all references to this matter from the 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 Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The Panel reviewed Unnamed Party Van Hoek's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In considering expungement, the Panel relied on the following evidence: the testimony of Claimant and other witnesses for Respondent, especially the Branch Manager, regarding management's supervision of Claimant's account, or lack thereof; Respondent's operations manual that details the firm's duty to provide account supervision; and various exhibits introduced into evidence, especially the extensive emails and notes exchanged between the parties; robust email communications between Claimant and Unnamed Party Van Hoek; the testimony of Unnamed Party Van Hoek about phone conversations between Claimant and Unnamed Party Van Hoek; and contemporaneous notes about communications between Claimant and Unnamed Party Van Hoek.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the recorded hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for negligent supervision and shall pay to Claimant the sum of \$150,000.00 in compensatory damages. No relief is being awarded for Claimant's remaining counts of breach of fiduciary duty, negligence, fraud, breach of contract, and violation of Section 10(b) of the Securities Exchange Act and rule 10b-5 of the Securities and Exchange Commission.
2. Each party shall bear their own costs.
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2002784) from registration records maintained by the CRD for Unnamed Party Cees-Jan Van Hoek (CRD Number 1225163) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Van Hoek 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 of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The Panel has made the above Rule 2080 finding based on the following reasons:

The preponderance of the evidence from Claimant, the Unnamed Party Van Hoek, and other witnesses, shows that Claimant had a history of investing in bonds, money markets, etc. and that he repeatedly rejected Unnamed Party Van Hoek's suggestions of various combinations of lower risk investments. Claimant says that he was averse to the risks involved in equities, bonds, etc., but he was adamant in his demand for returns that were higher than the low-risk securities like bonds, money markets, etc. Claimant's demands for alternatives were reinforced by his strong opinions regarding the alleged weakness of the American economy and the Dollar in particular. Claimant emphasized his desire for offshore investments as a hedge against America's financial future. To that end, he investigated and made a South American investment after making trips to Panama and South America.

The testimony and emails also reveal Claimant feared that the United States was falling behind the Chinese economy. The evidence shows that Claimant was interested in China as a hedge against America's weak future before Unnamed Party Van Hoek recommended the alternative investment in the Chinese economy. Claimant made a short-term investment in

gold but rejected precious metals as an alternative investment. Retrospectively, Claimant acknowledged that he was wrong, and Unnamed Party Van Hoek was right about the current American economy. Respondent's exhibits show that Unnamed Party Van Hoek provided Claimant with extensive information regarding the alternative investments at issue; his only complaint against Unnamed Party Van Hoek was that he did not break it down and make it clear enough to prevent him from making the alternative investments, which appears to be a classic case of buyer's regret.

Based upon the evidence before the Panel and the testimony regarding Unnamed Party Van Hoek's clean record over an extended career, the Panel has granted the request for expungement.

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 ("Code"), 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, Respondent Credit Suisse Securities (USA) LLC is assessed the following:

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

#### **Postponement Fees**

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

March 17-20, 2020, postponement requested by Respondent	= WAIVED
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Total Postponement Fee	= WAIVED
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The Panel has waived the entire postponement fee.

#### **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:

March 17-20, 2020, cancellation requested by Respondent	= WAIVED
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Total Last-Minute Cancellation Fee	=	WAIVED
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The Panel has waived the entire last-minute cancellation fee.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	400.00
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Claimant submitted one (1) discovery-related motion  
Respondent submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees	= \$	400.00
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The Panel has assessed the total discovery-related motion fees to Respondent.

**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:

Three (3) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	1,350.00
Pre-Hearing Conferences: April 12, 2019	1 session	
July 30, 2019	1 session	
July 31, 2019	1 session	

Three (3) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	3,900.00
Pre-Hearing Conferences: December 4, 2018	1 session	
September 20, 2019	1 session	
September 1, 2020	1 session	

Nine (9) hearing sessions @ \$1,300.00/session	= \$	11,700.00
Hearings: November 8, 2021	2 sessions	
November 9, 2021	2 sessions	
November 10, 2021	2 sessions	
November 11, 2021	2 sessions	
November 12, 2021	1 session	

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Total Hearing Session Fees	= \$	16,950.00
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The Panel has assessed the total hearing session fees to Respondent.

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

**ARBITRATION PANEL**

James W. Geiger	-	Public Arbitrator, Presiding Chairperson
Joseph Benalt	-	Public Arbitrator
Gregory Richard Barthelette	-	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**

***James W. Geiger***

James W. Geiger  
Public Arbitrator, Presiding Chairperson

**12/09/2021**

Signature Date

***Joseph Benalt***

Joseph Benalt  
Public Arbitrator

**12/09/2021**

Signature Date

***Gregory Richard Barthelette***

Gregory Richard Barthelette  
Public Arbitrator

**12/09/2021**

Signature Date

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December 09, 2021

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