

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Michael Meyers

Case Number: 19-02196

vs.

Respondents
Alexander Capital, L.P.,
Arive Capital Markets,
Lionel Darnell Scott ,
Lon Charles Faccini, Jr.,
Mirsad Muharemovic,
and John Joseph Santariello

Hearing Site: Minneapolis, Minnesota

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. Members and Associated Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Michael Meyers (“Claimant”): Michael S. MacDonald, Esq., Sunfish Lake, Minnesota.

For Respondents Alexander Capital, L.P. (“Alexander”), Arive Capital Markets (“Arive”), Lionel Darnell Scott (“Scott”), Lon Charles Faccini, Jr. (“Faccini”), and Mirsad Muharemovic (“Muharemovic”), collectively, “Respondents”: Bryan Ward, Esq. and Aaron Wright, Esq., Holcomb + Ward, LLP, Atlanta, Georgia.

Respondent John Joseph Santariello (“Santariello”) did not appear.

CASE INFORMATION

Statement of Claim filed on or about: August 6, 2019.

Claimant signed the Submission Agreement: August 5, 2019.

Statement of Answer filed by Alexander on or about: October 18, 2019.

Alexander signed the Submission Agreement: December 11, 2019.

Statement of Answer filed by Arive, Scott, Faccini, and Muharemovic, collectively, "Arive Respondents" on or about: October 18, 2019.

Arive signed the Submission Agreement: October 21, 2019.

Scott signed the Submission Agreement: October 23, 2019.

Faccini signed the Submission Agreement: October 21, 2019.

Muharemovic signed the Submission Agreement: October 21, 2019.

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

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: churning and excessive trading, violations of FINRA rules regarding discretionary accounts, breach of fiduciary duties under the Minnesota Financial Planning Law – Minn. Stat. § 45.026 – and other law, unsuitability, violations of FINRA and Minnesota rules regarding excessive trading, breach of contract, violations of federal and state securities laws, violations of Minnesota rules and statutes regarding failure to provide disclosure documents, negligence, fraudulent misrepresentation and negligent misrepresentation, common law fraud, failure to supervise, and respondeat superior. The causes of action related to Claimant's allegations that Respondents and Santariello failed to provide required disclosure documents, made numerous stock trades while exercising actual or de facto control over Claimant's accounts without speaking with Claimant about the trades, and deceived Claimant that the money invested was being put into Claimant's retirement account when, instead, it was put into a non-retirement account on margin and churned to generate commissions.

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. An award of approximately \$260,419.00 against Alexander, Arive, Scott, and Santariello, jointly and severally, for damages sustained through September 15, 2018.
2. An award of approximately \$46,623.00 against Alexander, Arive, Faccini, and Muharemovic, jointly and severally, for damages sustained as a result of improper conduct occurring after September 15, 2018.
3. A further award of punitive damages in the amount of \$120,000.00 against Respondents and Santariello, jointly and severally, under the Minnesota punitive damages law, Minn. Stat. § 549.20, or in such amount as the Panel deems just in its discretion;
4. An award against Respondents and Santariello of Claimant's reasonable attorneys' fees, as required by the Minnesota Securities Law, Minn. Stat. § 80A.76 Section 509.
5. An award against Respondents and Santariello of Claimant's costs and disbursements in pursuing this arbitration, including expert witness fees, pursuant to Minn. Stat. § 45.026 subd. 2.

6. A statement in the Award that the Award shall accrue interest at the legal rate of 10% per annum, from the date of the Award and continuing until the Award is paid in full, pursuant to Minn. Stat. § 549.09(c)(2).
7. Such other relief as the Panel deems just and reasonable.

In the Statement of Answer, Alexander requested that the Panel deny all claims against it; order that Claimant pay all costs, including but not limited to attorneys' fees associated with defending this claim; assess sanctions against Claimant sufficient to deter future baseless litigation; and award any and all other relief that it deems just and proper.

In the Statement of Answer, Arive Respondents requested that the Panel deny all claims against them; order that Claimant pay all costs, including but not limited to attorneys' fees associated with defending this claim; assess sanctions against Claimant sufficient to deter future bad conduct in litigation; grant expungement of all references to this matter from Central Registration Depository ("CRD") registration records for Scott, Faccini, and Muharemovic; and award any and all other relief that it deems just and proper.

At the hearing, Claimant requested compensatory damages of \$251,813.22 against Santariello.

OTHER ISSUES CONSIDERED AND DECIDED

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

Santariello did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code").

Santariello did not file a Statement of Answer. The Panel determined that Santariello was served with the Claim Notification letter dated August 6, 2019 by regular mail and certified mail and the Overdue Notice (including the Statement of Claim) dated September 26, 2019 by regular and certified mail.

The Claim Notification letter notified Santariello 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. Santariello failed to register for the DR Portal.

The Panel determined that service was proper on Santariello pursuant to Minnesota Statute 80A.88 section 611 and Santariello is, therefore, bound by the Panel's ruling and determination.

On October 18, 2019, Alexander filed a Motion to Dismiss pursuant to Rule 12504 of the Code, to which no response was filed. In the Initial Prehearing Conference Scheduling Order dated December 10, 2019, the Panel ruled that the Motion to Dismiss was not before the Panel due to the lack of submission agreement and granted leave to interpose after a submission agreement is filed.

On December 20, 2019, Alexander filed a Resubmitted Motion to Dismiss pursuant to Rule 12504 of the Code ("Resubmitted Motion"). On January 29, 2020, Claimant filed an Opposition

to the Resubmitted Motion. On February 3, 2020, Alexander filed a Reply to Claimant's Opposition to the Resubmitted Motion. On March 2, 2020, the Panel heard oral arguments on the Resubmitted Motion. In an Order dated March 3, 2020, the Panel denied the Resubmitted Motion.

On June 11, 2021, Claimant filed a notice of dismissal with prejudice against Respondents. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Respondents. Claimant's claims against Santariello proceeded.

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

Scott, Muharemovic, and Faccini did not pursue their requests for expungement after the claims against them were dismissed with prejudice. Accordingly, the Panel made no determination as to their requests for expungement.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

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

EXPLAINED DECISION

Santariello engaged in churning Claimant's account in violation of Minnesota Statutes §§ 80A.68 and 80A.76. Further, Santariello falsely represented to Claimant that funds from liquidation of issues within Claimant's IRA were being deposited into a different IRA account (and, thus, no taxable event would occur). However, such funds were not so deposited. By this false representation Santariello violated Minnesota Statutes §§ 80A.68 and 80A.76, engaged in deceit, and breached his fiduciary duties to Claimant in violation of Minnesota Statute § 454.026.

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. Santariello is liable for and shall pay to Claimant the sum of \$251,813.22 in compensatory damages.
2. Santariello is liable for and shall pay to Claimant interest on the above-stated sum at a rate of 10% per annum from August 5, 2019, through and including the date this Award is paid in full, pursuant to Minnesota Statute §549.09(c)(2).
3. Santariello is liable for and shall pay to Claimant fair and reasonable attorneys' fees in the amount of \$100,000.00 pursuant to Minnesota Statute §80A.76
4. Santariello is liable for and shall pay to Claimant the sum of \$5,985.00 in costs.

5. Santariello is liable for and shall pay to Claimant the sum of \$300.00 to reimburse Claimant for the filing fee previously paid to FINRA Dispute Resolution Services.
6. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, 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 parties, Alexander and Arive are each assessed the following:

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

Postponement Fees

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

November 9-13, 2020, postponement requested by Claimant and Respondents	=\$ 1,125.00
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Total Postponement Fees	=\$ 1,125.00
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The Panel has assessed the total postponement fees to Santariello.

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 the Panel @ \$1,125.00/session	=\$ 3,375.00
Pre-Hearing Conferences: December 9, 2019	1 session
March 2, 2020	1 session
June 14, 2021	1 session

One (1) hearing session @ \$1,125.00/session	=\$ 1,125.00
Hearing: November 3, 2021	1 session

Total Hearing Session Fees	=\$ 4,500.00
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The Panel has assessed \$1,687.50 of the hearing session fees to Claimant.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Respondents and Santariello.

The Panel has assessed \$1,125.00 the hearing session fees to Alexander.

The Panel has assessed \$1,125.00 of the hearing session fees to Santariello.

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

ARBITRATION PANEL

Leo G. Stern	-	Public Arbitrator, Presiding Chairperson
Jack D. Elmquist	-	Public Arbitrator
John (Jack) Louis Neveaux, Jr.	-	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

Leo G. Stern

Leo G. Stern
Public Arbitrator, Presiding Chairperson

11/11/2021

Signature Date

Jack D. Elmquist

Jack D. Elmquist
Public Arbitrator

11/10/2021

Signature Date

John (Jack) Louis Neveaux, Jr.

John (Jack) Louis Neveaux, Jr.
Public Arbitrator

11/11/2021

Signature Date

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November 12, 2021

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