

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Carol Avery
Robert Avery

Case Number: 20-00161

vs.

Respondent

Ameriprise Financial Services, LLC

Hearing Site: Houston, Texas

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

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Carol Avery, and Robert Avery (“Claimants”): Jason J. Kane, Esq., Peiffer Wolf Carr & Kane, A Professional Law Corporation, Pittsford, New York.

For Respondent Ameriprise Financial Services, LLC (“Respondent”): Niels P. Murphy, Esq. and Lawton R. Greaves, Esq., Murphy & Anderson, P.A., Jacksonville, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 17, 2020.

Claimants signed the Submission Agreement: January 16, 2020.

Statement of Answer filed on or about: March 9, 2020.

Amended Statement of Answer filed on or about: January 12, 2021.

Respondent signed the Submission Agreement: March 19, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violations of FINRA Rule 2110, violations of FINRA Rule 2111, negligence, misrepresentations and omissions of material facts, and breach of fiduciary duty. The causes of action relate to allegations that Respondent failed to make suitable recommendations to Claimants and

Respondent's recommendations to Claimants led to an over-concentration of annuities and alternative investments in Claimants' portfolios.

Unless specifically admitted in the Amended 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, Claimants requested an award for all losses of principal suffered by Claimants; all interest, commissions, and fees paid by Claimants; loss of income that would have been received had Claimants' accounts been managed properly, as well as other losses, foreseeable or not, that Claimants have suffered, including non-pecuniary losses; attorneys' fees, costs, and other expenses; interest, both pre-judgment and post-judgment; all other sums Claimants are entitled to at law or equity; and punitive damages.

In the Amended Statement of Answer, Respondent requested dismissal of the Statement of Claim, with prejudice; an award of all reasonable forum costs and expenses; expungement of all references to this matter from Central Registration Depository ("CRD") registration records of Unnamed Party Peter Nett; and other relief as the Panel deems just and proper.

At the hearing, Claimants requested compensatory damages of \$208,000.00, attorneys' fees of \$83,200.00, and costs of \$12,104.00 and withdrew their request for punitive damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 12, 2021, Respondent filed a Motion to Amend Answer and Affirmative Defenses ('Motion to Amend'), to which no response was filed. In an Order dated January 14, 2021, the Panel granted the Motion to Amend.

The Panel considered Respondent's request for expungement on behalf of Peter Nett as part of the recorded evidentiary hearing in this matter. Claimants did not oppose Respondent's request for expungement on behalf of Peter Nett.

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. Respondent is liable for and shall pay to Carol Avery the sum of \$30,000.00 in compensatory damages.

2. Respondent is liable for and shall pay to Carol Avery interest on the above-stated sum at the rate of 5% per annum from December 1, 2021 through and including the date the award is paid in full.
3. Respondent is liable for and shall pay to Carol Avery the sum of \$16,000.00 in attorneys' fees pursuant to Chapter 38 of the Texas Civil Practice and Remedies Code.
4. Respondents is liable for and shall pay to Carol Avery the sum of \$5,000.00 in costs.
5. Respondent is liable for and shall pay to Claimants \$375.00 to reimburse Claimants for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
6. Respondent is awarded ownership of the Franklin Square Energy & Power Fund ("FSEP") currently held by Carol Avery. After receipt of the \$30,000.00 award, Carol Avery has 30 calendar days to initiate the transfer of the FSEP investment. Any expenses related to the transfer of the FSEP investment shall be borne by Respondent.
7. Respondent's request for expungement of Occurrence Number 2060794 from registration records maintained by the CRD for Unnamed Party Peter Dieter Nett is denied.
8. Any and all claims for relief not specifically addressed herein, including any requests for treble damages, 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	=\$ 1,575.00
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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 is 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:

August 24-27, 2021, postponement requested by the parties	=\$ 1,125.00
Total Postponement Fees	=\$ 1,125.00

The Panel has assessed the total postponement fees to Respondent.

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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Respondent submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
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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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: January 25, 2021	1 session	

One (1) pre-hearing session with the Panel @ \$1,125.00/session	= \$	1,125.00
Pre-Hearing Conference: May 18, 2020	1 session	

Seven (7) hearing sessions @ \$1,125.00/session	= \$	7,875.00
Hearings:		
November 2, 2021	2 sessions	
November 3, 2021	3 sessions	
November 4, 2021	2 sessions	

Total Hearing Session Fees	= \$	9,450.00
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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

Sherry R. Wetsch	-	Public Arbitrator, Presiding Chairperson
Mark Ritchie	-	Public Arbitrator
Jude A. Smith	-	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

Sherry R. Wetsch

Sherry R. Wetsch
Public Arbitrator, Presiding Chairperson

11/09/2021

Signature Date

Mark Ritchie

Mark Ritchie
Public Arbitrator

11/09/2021

Signature Date

Jude A Smith

Jude A. Smith
Non-Public Arbitrator

11/09/2021

Signature Date

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November 09, 2021

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