

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

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In the Matter of the Arbitration Between:

Claimant

Marjorie L. Ullerich

Case Number: 21-00296

vs.

Respondents

Independent Financial Group, LLC,  
Royal Alliance Associates, Inc., and  
Gardner Financial Services, Inc.

Hearing Site: Minneapolis, Minnesota

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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. Members

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Marjorie L. Ullerich (“Claimant”): F. Chet Taylor, Esq., Aries Legal, PLC, Minneapolis, Minnesota.

For Respondent Independent Financial Group, LLC (“IFG”): Benjamin J. Biard, Esq., Winget Spadafora & Schwartzberg, LLP, Miami, Florida.

For Respondent Royal Alliance Associates, Inc. (“Royal Alliance”): Gregory M. Curley, Esq., Royal Alliance Associates, Inc., Jersey City, New Jersey.

For Respondent Gardner Financial Services, Inc. (“Gardner Financial”): Kevin D. Hofman, Esq., Messerli & Kramer P.A., Minneapolis, Minnesota.

**CASE INFORMATION**

Statement of Claim filed on or about: February 3, 2021.

Claimant signed the Submission Agreement: February 2, 2021.

Statement of Answer filed by IFG on or about: April 9, 2021.

IFG signed the Submission Agreement: January 6, 2022.

Statement of Answer filed by Royal Alliance on or about: March 29, 2021.

Royal Alliance filed an executed Submission Agreement: March 29, 2021.

Statement of Answer filed by Gardner Financial on or about: April 2, 2021.  
Gardner Financial signed the Submission Agreement: April 2, 2021.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: common law claims for fraud, conversion and breach of fiduciary duty; violation of MINN. STAT. §45.026 and MINN. RULE 2876.5024; violation of the Minnesota Securities Act, MINN. STAT. §80A.68 & §80A.76, and MINN. RULES 2876.5021 & 2876.5023; violation of the Minnesota Civil Theft Statute, MINN. STAT. §604.14; violation of Minnesota Prevention of Consumer Fraud Statute, MINN. STAT. §325F.68, Minnesota Deceptive Trade Practices Act, MINN. STAT. §325D.44, and MINN. STAT. §8.31, subd. 3a; violation of the Minnesota Prevention of Deceptive Acts Against Vulnerable Persons Statute, MINN. STAT. §325F.71; violation of various FINRA Conduct Rules, including but not limited to (i) FINRA Rule 2010; (ii) rules prohibiting the sale of unsuitable investments; (iii) rules requiring strong supervision of salespersons, including supervision of their outside business activities and private securities transactions; (iv) rules prohibiting “selling away” and unauthorized trading; (v) rules banning conflicts of interest; and (vi) rules requiring fair dealing with customers; and respondeat superior. The causes of action related to Claimant’s allegation that Respondents’ registered representative engaged in fraudulent conduct and mishandled Claimant’s investments.

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

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

Unless specifically admitted in the Statement of Answer, Gardner Financial 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 of more than \$500,000.00 but less than \$1,000,000.00, pre- and post-award interest, statutory penalties, punitive damages, costs, expert witness fees, attorneys’ fees, and such other and further relief as the Panel deems to be fair and reasonable.

In the Statement of Answer, IFG requested that the Panel dismiss the Statement of Claim in its entirety, award it costs and expenses of this arbitration, including forum fees and reasonable attorneys’ fees, and award it other and further relief as is just and proper.

In the Statement of Answer, Royal Alliance requested that the Panel deny Claimant’s claims in their entirety and order such other and further relief as the Panel deems to be just and equitable.

In the Statement of Answer, Gardner Financial requested that the Panel deny Claimant’s claims in their entirety and order all other relief that is just and equitable.

At the hearing, Claimant requested total damages in the amount of \$638,526.75, which included \$34,444.44 for theft of monies and interest in the amount of \$21,374.50 at the rate of 10% from October 27, 2015 to January 10, 2022; civil penalties of \$10,000.00 and \$34,444.44 pursuant to MINN. STAT. §325F.71, subd. 2(a) and §604.14, subd. 1; \$119,000.00 for breach of contract; \$100,000.00 for attorneys' fees; and \$319,263.38 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 June 21, 2021, both Claimant and Gardner Financial and Claimant and Royal Alliance filed Stipulations and Proposed Orders for Dismissal Without Prejudice. On June 23, 2021, the Panel issued Orders granting the dismissals without prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against Royal Alliance and Gardner Financial.

On November 10, 2021, IFG filed a Motion to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). On December 27, 2021, Claimant filed a Response to the Motion to Dismiss. On January 3, 2022, IFG filed a Reply in Support of Its Motion to Dismiss. On January 6, 2022, the Panel heard oral arguments on the Motion to Dismiss. The same day, the Panel issued an Order denying the Motion to Dismiss without prejudice. The request for attorneys' fees and other sanctions were taken under advisement to be addressed at the evidentiary hearing.

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. IFG is liable for and shall pay to Claimant the sum of \$100,000.00 in compensatory damages.
2. IFG is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 10% per annum from and including January 13, 2022 through the date the Award is paid in full.
3. IFG is liable for and shall pay to Claimant the sum of \$425.00 in costs as reimbursement of the non-refundable portion of the filing fee.
4. IFG liable for and shall pay to Claimant the sum of \$70,000.00 in attorneys' fees pursuant to Minn.Stat. § 80A.76, § 325F.68-70, and § 325F.71.
5. 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 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	=\$ 1,725.00
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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 parties, IFG, Royal Alliance, and Gardner Financial are each assessed the following:

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

### **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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Claimant 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 IFG.

### **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: December 15, 2021      1 session	

Three (3) pre-hearing sessions with the Panel @ \$1,300.00/session	=\$ 3,900.00
Pre-Hearing Conferences: May 21, 2021      1 session	
September 30, 2021      1 session	
January 6, 2022      1 session	

Seven (7) hearing sessions @ \$1,300.00/session	=\$ 9,100.00
Hearings: January 10, 2022      2 sessions	
January 11, 2022      2 sessions	
January 12, 2022      2 sessions	

January 13, 2022

1 session

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Total Hearing Session Fees	= \$ 13,450.00
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The Panel has assessed the total hearing session fees to IFG.

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

**ARBITRATION PANEL**

Michael S. Jordan	-	Public Arbitrator, Presiding Chairperson
Phyllis Karasov	-	Public Arbitrator
Alain Frecon	-	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**

**Michael S. Jordan**

Michael S. Jordan  
Public Arbitrator, Presiding Chairperson

**01/21/2022**

Signature Date

**Phyllis Karasov**

Phyllis Karasov  
Public Arbitrator

**01/21/2022**

Signature Date

**Alain Frecon**

Alain Frecon  
Public Arbitrator

**01/21/2022**

Signature Date

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January 21, 2022

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