

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

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In the Matter of the Arbitration Between:

Claimant

Margaret Farwell Smith, individually and as Trustee of the Margaret Farwell Smith 2007 Trust UAD 10/02/07 and the Margaret Farwell Smith CRUT Trust dtd 5/15/07

Case Number: 13-02924

vs.

Respondents

Centaurus Financial, Inc.  
Fera Shivaee

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Margaret Farwell Smith, individually and as Trustee of the Margaret Farwell Smith 2007 Trust UAD 10/02/07 and the Margaret Farwell Smith CRUT Trust dtd 5/15/07, hereinafter collectively referred to as "Claimant": Robert L. Gonser, Esq., Hunsucker Goodstein, PC, Lafayette, California.

For Respondents Centaurus Financial, Inc., and Fera Shivaee, hereinafter collectively referred to as "Respondents": G. Thomas Fleming III, Esq., Jones, Bell, Abbott, Fleming & Fitzgerald, LLP, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: October 4, 2013.

Claimant signed the Submission Agreement: September 30, 2013.

Statement of Answer filed by Respondents on or about: December 13, 2013.

Amended Statement of Answer filed by Respondents on or about: September 23, 2014.

Centaurus Financial, Inc. did not sign the Submission Agreement.

Fera Shivaee did not sign the Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability, breach of fiduciary duty of loyalty, negligence, failure to do due diligence, negligent misrepresentation, breach of contract, material omissions and misrepresentations, securities fraud, fraud based on concealment, failure to supervise/negligent supervision, and violations of FINRA rules and regulations regarding the sale of securities. The causes of action relate to Claimant's investments in NNN Wesley Paces Tenant in Common ("TIC"), and various other unspecified Real Estate Investment Trusts ("REIT").

Unless specifically admitted in their Answers, 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. Compensatory damages or in the alternative, rescissionary damages in an amount to be proven at hearing estimated to exceed \$1,000,000.00;
2. Compensatory damages in the amount of \$862.00 representing capital calls in connection with the NNN Wesley Paces TIC;
3. Interest at the statutory rate of 10% per year;
4. All tax liabilities incurred by Claimant associated with the performance of the securities investments at issue;
5. All management fees and/or commissions paid in connection with Claimant's account;
6. Claimant's costs of suit;
7. Punitive and/or exemplary damages at the discretion of the Panel;
8. Lost opportunity damages; and
9. Attorneys' fees and costs and additional damages as deemed appropriate and as allowed by law.

In the Statements of Answer, Respondents requested:

1. The Panel dismiss Claimant's claims;
2. All forum fees in this proceeding be assessed against Claimant;
3. This matter be expunged from the Central Registration Depository record of Respondent Fera Shivaee based on the finding of the Panel that Claimant's claims and allegations are clearly erroneous and false; and
4. Such other and further relief as may be appropriate.

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

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

Respondents did not file with FINRA Dispute Resolution properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On September 23, 2014, parties filed a Stipulation for Filing Amended Answer. On September 26, 2014, the Chairperson, on behalf of the Panel, signed parties' stipulation accepting Respondents' Amended Statement of Answer.

During the recorded evidentiary hearing, after the conclusion of Claimant's case-in-chief, Respondents moved to dismiss the case pursuant to FINRA Rule 12206. The Panel denied the motion finding the time limits specified by the rule do not start running until damages are sustained.

Also during the evidentiary hearing, Respondents made a motion pursuant to California Code of Civil Procedure §998. The Panel declines to permit consideration of any §998 offer in rendering the award.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

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

1. Respondents are jointly and severally liable for and shall pay to Claimant \$405,778.00 in compensatory damages.
2. Respondents are jointly and severally liable for and shall pay to Claimant \$81,558.00 in pre-judgment interest.
3. Respondents are jointly and severally liable for and shall pay to Claimant post-judgment interest on the aforementioned award of \$405,778.00 at the rate of 10% per annum from the date of service of this award until the award of \$405,778.00 is paid in full.
4. Respondents are jointly and severally liable for and shall pay to Claimant attorneys' fees in the amount of \$95,000.00 pursuant to FINRA Rules 12409 and 12902(c), pursuant to the Statement of Claim, and pursuant to *Hosier v. Citigroup Global Markets*, 835 F.Supp.2d 1098 (2011). This amount is to be applied against the attorney's fee agreement of 35% of the amount recovered, not in addition to. Accordingly, the 35% fee agreement is to be reduced by \$95,000.00.
5. Respondents are jointly and severally liable for and shall pay to Claimant \$43,840.95 in expert witness fees.
6. The Panel orders rescission. Concurrent with Respondents' payment of the full amounts listed below, Claimant shall sign over to Respondents all ownership rights Claimant has in the below investments:
  - KBS REIT \$74,194.00;
  - ICON Leasing \$45,815.00;
  - Apartment Trust of America \$35,835.00;

- Behringer Harvard \$44,430.00;
  - Hines REIT \$31,322.00;
  - Cornerstone \$18,579.00; and
  - Redwood Mortgage \$38,297.00.
7. Respondents are jointly and severally liable for and shall pay to Claimant \$600.00 as reimbursement for the non-refundable portion of the initial claim filing fee Claimant previously paid to FINRA Dispute Resolution.
8. Respondent Fera Shivaee's request for expungement is denied.
9. Any and all relief not specifically addressed herein, including punitive and exemplary damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	=\$ 1,800.00
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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, Centaurus Financial, Inc. is assessed the following:

Member Surcharge	=\$ 2,800.00
Pre-Hearing Processing Fee	=\$ 750.00
Hearing Processing Fee	=\$ 5,000.00

#### **Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena with one arbitrator @ \$200.00	= \$200.00
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Total Contested Motion for Issuance of Subpoenas Fees	= \$200.00
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The Panel has assessed \$200.00 of the contested motion for issuance of subpoenas fees jointly and severally to Respondents.

#### **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), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,200.00/session = \$1,200.00  
Pre-hearing conference: March 20, 2014 1 session

Eleven (11) Hearing sessions @ \$1,200.00/session = \$13,200.00

Hearing Dates: January 26, 2015 2 sessions  
January 27, 2015 2 sessions  
January 28, 2015 2 sessions  
January 29, 2015 2 sessions  
January 30, 2015 2 sessions  
February 2, 2015 1 session

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Total Hearing Session Fees = \$14,400.00

The Panel has assessed \$14,400.00 of the hearing session fees jointly and severally to Respondents.

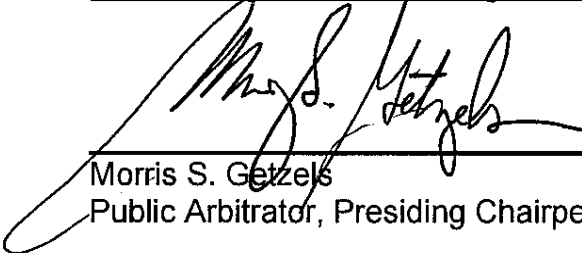
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Morris S. Getzels	-	Public Arbitrator, Presiding Chairperson
Owen Frances	-	Public Arbitrator
Mark Alan Sevigny	-	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**

  
\_\_\_\_\_  
Morris S. Getzels  
Public Arbitrator, Presiding Chairperson

MAY 22, 2015  
Signature Date

\_\_\_\_\_  
Owen Frances  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Mark Alan Sevigny  
Public Arbitrator

\_\_\_\_\_  
Signature Date

May 26, 2015  
Date of Service (For FINRA Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Owen Frances  
Public Arbitrator

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Signature Date



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Mark Alan Seigny  
Public Arbitrator

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5/23/2015

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Signature Date

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