

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Nancy Mailhot
Ivan Mailhot
Nancy Mailhot IRA
Ivan Mailhot IRA

Case Number: 18-01349

vs.

Respondents

First Allied Securities, Inc.
National Planning Corporation
SagePoint Financial, Inc.

Hearing Site: Phoenix, Arizona

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. Members

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Nancy Mailhot, Ivan Mailhot, Nancy Mailhot IRA and Ivan Mailhot IRA (collectively “Claimants”): Gary S. Menzer, Esq. and Michael S. Hill, Esq., Menzer & Hill, P.A., Boca Raton, Florida.

For Respondent First Allied Securities, Inc. (“First Allied”): Edwin A. Barkel, Esq., Lewis Roca Rothgerber Christie LLP, Phoenix, Arizona.

For Respondent National Planning Corporation (“NPC”): Chad Weaver, Esq., Freeman Mathis & Gary, LLP, Seal Beach, California.

For Respondent SagePoint Financial, Inc. (“SagePoint”): Greg Curley, Esq., Advisor Group, Inc., Jersey City, New Jersey.

Hereinafter, First Allied, NPC and SagePoint are collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: April 11, 2018.
Claimants signed the Submission Agreement: April 12, 2018.

Statement of Answer filed by First Allied on or about: July 2, 2018.
First Allied signed the Submission Agreement: June 12, 2018.

Statement of Answer filed by NPC on or about: July 2, 2018.
NPC signed the Submission Agreement: July 2, 2018.

Statement of Answer filed by SagePoint on or about: May 25, 2018.
SagePoint signed the Submission Agreement: May 25, 2018.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: negligence and gross negligence; misrepresentation; omission of a material fact; failure to supervise; breach of fiduciary duty; and breach of contract. The causes of action relate to the following investments, including, but not limited to: Ridgewood Energy; Griffin Capital Essential; Griffin-American Healthcare REIT III; American Realty Capital Healthcare Trust II; Hospitality Investors Trust Inc. (f/k/a ARC Hospitality Trust, Inc.); Global Net REIT (f/k/a ARC Global); Northstar Healthcare Income, Inc.; Cole Capital; UIT Advisors Bond Fund; Metlife Annuity; Midland Annuity; Jackson Life Annuity; and AXA Annuity.

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

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Compensatory damages of approximately \$1,000,000.00;
2. Statutory damages pursuant to the Arizona Securities Act, including:
 - a. rescission damages;
 - b. lost opportunity damages;
 - c. accrued statutory interest; and
 - d. attorneys' fees;
3. Costs;
4. Punitive damages;
5. Filing and hearing fees; and
6. Other remedies the Panel deems proper and appropriate.

In the Statement of Answer, First Allied requested

1. The claims be dismissed with prejudice; and
2. The Panel order expungement of all references to the arbitration from the registration records for NPC, Unnamed Party Travis G. Blaser and Unnamed Party Ronald Reed McCook maintained by the Central Registration Depository ("CRD").

In its Statement of Answer, NPC requested:

1. Claimants take nothing by way of the Statement of Claim;
2. The Panel order expungement of all reference to the arbitration from the registration records of NPC maintained by the CRD; and
3. Such other and further relief as the Panel deems just and proper.

In its Statement of Answer, SagePoint requested:

1. The Statement of Claim be dismissed in its entirety; and
2. Any other and further relief as the Panel may deem just and equitable.

At the hearing, Claimants requested:

1. Compensatory damages in the amount of \$1,143,030.00;
2. Market adjusted damages in the amount of \$818,470.00;
3. Costs in the amount of \$40,000.00; and
4. Attorneys' fee in the amount of \$660,495.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On January 14, 2019, SagePoint filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On February 1, 2019, Claimants filed a response opposing the Motion to Dismiss. On February 6, 2019, SagePoint filed a reply in support of its Motion to Dismiss. Following oral arguments on March 29, 2019, the Panel issued an order denying the Motion to Dismiss.

On June 8, 2020, Claimants filed a notice of voluntary dismissal with prejudice for NPC. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against NPC.

On June 19, 2020, Claimants filed a notice of voluntary dismissal with prejudice for SagePoint. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim against SagePoint.

On February 11, 2022, First Allied filed a Motion in Limine to Exclude the Expert Report of Craig McCann. During the recorded evidentiary hearing, the Panel denied First Allied's motion in limine.

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. First Allied is liable for and shall pay to Claimants the sum of \$1,961,500.00 in compensatory damages.
2. First Allied is liable for and shall pay to Claimants the sum of \$40,000.00 in costs.
3. First Allied is liable for and shall pay to Claimants the sum of \$660,500.00 in attorneys' fees pursuant to Arizona contract law.
4. First Allied is liable for and shall pay to Claimants the sum of \$425.00 to reimburse Claimants for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
5. First Allied's request on behalf of Unnamed Party Travis G. Blaser (CRD Number 4228055) for expungement of the above-captioned arbitration (Occurrence Number 1977686) from registration records maintained by the CRD is denied.
6. First Allied's request on behalf of Unnamed Party Ronald Reed McCook (CRD Number 4155186) for expungement of the above-captioned arbitration (Occurrence Number 1977563) from registration records maintained by the CRD is denied.
7. Any and all claims for relief not specifically addressed herein, including any requests for punitive 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 | =\$ 1,725.00 |
|--------------------------|--------------|

**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, Respondents are each 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:

| | |
|--|--------|
| September 16-20, 2019, postponement requested by Claimant | Waived |
| May 18-22, 25-29, 2020 & June 1-5, 2020, postponement requested by Parties | Waived |

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:

| | | |
|---|------------|-----------|
| Four (4) pre-hearing sessions with the Panel @ \$1,300.00/session | = \$ | 5,200.00 |
| Pre-Hearing Conferences: December 10, 2018 | 1 session | |
| March 29, 2019 | 1 session | |
| August 19, 2019 | 1 session | |
| January 29, 2021 | 1 session | |
| Seventeen (17) hearing sessions @ \$1,300.00/session | = \$ | 22,100.00 |
| Hearings: February 14, 2022 | 2 sessions | |
| February 15, 2022 | 2 sessions | |
| February 16, 2022 | 2 sessions | |
| February 17, 2022 | 2 sessions | |
| February 18, 2022 | 2 sessions | |
| February 21, 2022 | 2 sessions | |
| February 22, 2022 | 2 sessions | |
| February 23, 2022 | 2 sessions | |
| February 24, 2022 | 1 session | |

Total Hearing Session Fees = \$ 27,300.00

The Panel has waived \$1,300.00 of the hearing sessions fees.

The Panel has assessed \$1,300.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,300.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,300.00 of the hearing session fees to SagePoint.

The Panel has assessed \$22,100.00 of the hearing session fees to First Allied.

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

ARBITRATION PANEL

| | | |
|-------------------|---|--|
| Edwin J. Buckley | - | Public Arbitrator, Presiding Chairperson |
| Harold J. Merkow | - | Public Arbitrator |
| Ronald Dean Mayes | - | 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

Edwin J. Buckley

Edwin J. Buckley
Public Arbitrator, Presiding Chairperson

03/11/2022

Signature Date

Harold J. Merkow

Harold J. Merkow
Public Arbitrator

03/10/2022

Signature Date

Ronald Dean Mayes

Ronald Dean Mayes
Public Arbitrator

03/10/2022

Signature Date

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March 11, 2022

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