

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Douglas Muhlbauer
The Harbor Group of New York, Inc.
The Harbor Group of South Florida, Inc.
Douglas Muhlbauer and George Muhlbauer, as
Trustees of The Harbor Group of New York, Inc.
Cash Balance Plan, The Harbor Group of South
Florida, Inc. Cash Balance Plan, The Harbor Group
of New York, Inc. 401(k), The Harbor Group of South
Florida, Inc. 401(k), and American Endowment
Foundation FBO Douglas Muhlbauer and Family
Charitable Fund

Case Number: 23-01270

vs.

Respondent

Stifel, Nicolaus & Co., Inc.

Hearing Site: Boca Raton, Florida

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 an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimants Douglas Muhlbauer, The Harbor Group of New York, Inc., The Harbor Group of South Florida, Inc., and Douglas Muhlbauer and George Muhlbauer, as Trustees of The Harbor Group of New York, Inc. Cash Balance Plan, The Harbor Group of South Florida, Inc. Cash Balance Plan, The Harbor Group of New York, Inc. 401(k), The Harbor Group of South Florida, Inc. 401(k), and American Endowment Foundation FBO Douglas Muhlbauer and Family Charitable Fund: Jeffrey Erez, Esq. and Stefan Apotheker, Esq., Erez Law, PLLC, Miami, Florida.

For Respondent Stifel, Nicolaus & Co., Inc.: G. Wayne Hillis, Jr., Esq. and Scott Zweigel, Esq., Bradley Arant Boult Cummings LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed by Claimants on or about: May 9, 2023.
Douglas Muhlbauer signed the Submission Agreement: May 5, 2023.
The Harbor Group of New York, Inc. signed the Submission Agreement: May 5, 2023.
The Harbor Group of South Florida, Inc. signed the Submission Agreement: May 5, 2023.
Douglas Muhlbauer and George Muhlbauer, as Trustees of The Harbor Group of New York, Inc. Cash Balance Plan signed the Submission Agreement: May 5, 2023.
Douglas Muhlbauer and George Muhlbauer, as Trustees of The Harbor Group of South Florida, Inc. Cash Balance Plan signed the Submission Agreement: May 5, 2023.
Douglas Muhlbauer and George Muhlbauer, as Trustees of The Harbor Group of New York Inc. 401(k) signed the Submission Agreement: May 5, 2023.
Douglas Muhlbauer and George Muhlbauer, as Trustees of The Harbor Group of South Florida, Inc. 401(k) signed the Submission Agreement: May 5, 2023.
American Endowment Foundation FBO Douglas Muhlbauer and Family Charitable Fund signed the Submission Agreement: May 5, 2023.
Amended Statement of Claim filed by Claimants on or about: June 29, 2023.

Statement of Answer and Counterclaim filed by Respondent on or about: June 28, 2023.
Stifel, Nicolaus & Co., Inc. signed the Submission Agreement: June 27, 2023.

Answer to Respondent's Counterclaim filed by Douglas Muhlbauer and George Muhlbauer, as Trustees of The Harbor Group of New York, Inc. Cash Balance Plan, The Harbor Group of South Florida, Inc. Cash Balance Plan, The Harbor Group of New York, Inc. 401(k), and The Harbor Group of South Florida, Inc. 401(k) (sometimes collectively referred to herein as "Counter-Respondents") on or about: July 18, 2023.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; breach of contract; violation of the Florida Securities and Investor Protection Act; and violation of ERISA. The causes of action relate to Claimants' investments in structured notes.

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

In the Counterclaim, Respondent asserted the following cause of action against Counter-Respondents: indemnification of Respondent pursuant to the Qualified Employee Benefit Account Certification of Plan Powers and Investment Guidelines (the "Certification").

Unless specifically admitted in the Answer to Respondent's Counterclaim, Counter-Respondents denied the allegations made in the Counterclaim and asserted affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: damages in excess of \$5,000,000.00; punitive damages; interest; costs; attorneys' fees; and such other and further relief as the Panel deemed just and proper.

In the Statement of Answer, Respondent requested: denial of Claimants' claims in their entirety; costs and attorneys' fees pursuant to Claimants' Client Agreements with Respondent, Fla. Stat. § 517.211(6), and/or 29 U.S.C. § 1132(g)(1); assess all FINRA fees against Claimants; and expungement on behalf of Unnamed Person Chuck Roberts of all references to Occurrence Number 2275923 from Central Registration Depository ("CRD") registration records (CRD Number 2064602).

In the Counterclaim, Respondent requested: Counter-Respondents indemnify Respondent for all alleged losses on investments in the Counter-Respondents' accounts and such other and further relief as the Panel deemed appropriate.

In the Answer to Respondent's Counterclaim, Counter-Respondents requested: denial of all claims asserted in Respondent's Counterclaim; assess all costs and FINRA fees against Respondent; and such other and further relief as the Panel deemed just and proper.

At the hearing, Respondent withdrew the request for expungement on behalf of Unnamed Person Chuck Roberts. Therefore, the request for expungement of Occurrence Number 2275923 was not considered and was dismissed without prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

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

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 Claimants the sum of \$1,879,092.00 (\$891,764.00 for out-of-pocket costs for callable structured notes and \$987,328.00 for out-of-pocket costs for Horizon and Solutions accounts) in compensatory damages pursuant to Florida Statutes §517.211(3) for rescission.
2. Respondent is liable for and shall pay to Claimants interest on the above-stated sum at the Florida statutory judgment rate from the liquidation date of each account through and including the date the Award is paid in full.
3. Respondent is liable for and shall pay to Claimants the sum of \$469,773.00 in attorneys' fees pursuant to Florida Statutes §517.211(6).

4. Respondent's Counterclaim is denied.
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 ("Code"), the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	=\$ 2,300.00
Counterclaim Filing Fee	=\$ 4,200.00

**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 a party, Respondent is assessed the following:

Member Surcharge	=\$ 3,850.00
Member Process Fee	=\$ 7,050.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

January 26, 2024, cancellation requested jointly by the parties	=\$ 300.00
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Total Late Pre-Hearing Cancellation Fees	=\$ 300.00
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The Panel has assessed \$150.00 of the late pre-hearing cancellation fees jointly and severally to Claimants.

The Panel has assessed \$150.00 of the late pre-hearing cancellation fees to Respondent.

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	=\$ 400.00
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Claimants submitted one (1) discovery-related motion
Respondent submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	=\$ 400.00
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The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$200.00 of the 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: July 18, 2024	1 session	
Two (2) pre-hearing sessions with the Panel @ \$1,575.00/session	= \$	3,150.00
Pre-Hearing Conferences: August 29, 2023	1 session	
August 14, 2024	1 session	
Twenty-nine (29) hearing sessions @ \$1,575.00/session	= \$	45,675.00
Hearings:		
September 9, 2024	2 sessions	
September 10, 2024	2 sessions	
September 11, 2024	3 sessions	
September 12, 2024	2 sessions	
September 13, 2024	2 sessions	
September 16, 2024	2 sessions	
September 17, 2024	2 sessions	
September 18, 2024	3 sessions	
September 20, 2024	2 sessions	
September 21, 2024	2 sessions	
October 1, 2024	2 sessions	
October 4, 2024	2 sessions	
October 5, 2024	3 sessions	

Total Hearing Session Fees = \$ 49,275.00

The Panel has assessed \$20,295.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$28,980.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Carl Henry Perdue	-	Public Arbitrator, Presiding Chairperson
Allen Robin	-	Public Arbitrator
Richard Gendler	-	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

Carl Henry Perdue

Carl Henry Perdue
Public Arbitrator, Presiding Chairperson

11/07/2024

Signature Date

Allen Robin

Allen Robin
Public Arbitrator

11/07/2024

Signature Date

Richard Gendler

Richard Gendler
Public Arbitrator

11/07/2024

Signature Date

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.

November 08, 2024

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