

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Troy D. Benitone and  
Elizabeth Benitone

Case Number: 16-01819

vs.

Respondent

J.J.B. Hilliard, W.L. Lyons, LLC

Hearing Site: St. Louis, Missouri

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Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Troy D. Benitone (“T. Benitone”) and Elizabeth Benitone (“E. Benitone”), hereinafter collectively referred to as “Claimants”: Bruce D. Oakes, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

For Respondent J.J.B. Hilliard, W.L. Lyons, LLC (“Respondent”): Janet P. Jakubowicz, Esq. and Aaron W. Marcus, Esq., Bingham Greenebaum Doll LLP, Louisville, Kentucky.

**CASE INFORMATION**

Statement of Claim filed on or about: June 22, 2016.

T. Benitone signed the Submission Agreement: June 1, 2016.

E. Benitone signed the Submission Agreement: June 1, 2016.

Statement of Answer filed on or about: August 22, 2016.

Respondent signed the Submission Agreement: August 19, 2016.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of Illinois’ Securities Act, §§ 815 ILCS 5/12 *et al.*; breach of fiduciary duty; negligence/negligent misrepresentation and omission; breach of contract; restitution; common law fraud; and negligent supervision. The causes of action related to Claimants’ allegations that Respondent and Respondent’s registered representative sold all of Claimants’ blue chip stocks and invested all of the funds in their joint account and T. Benitone’s IRA in a highly speculative oil and gas company known as Breitburn Energy Partners Limited Partnership. Claimants asserted that this lack of diversification exposed them to massive risk which was contrary to their conservative investment objectives and low risk tolerance level.

Unless specifically admitted in the 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 \$400,000.00 in compensatory (statutory) damages, unspecified punitive damages, interest, attorneys' fees, costs, including FINRA filing fees and forum fees, and other appropriate relief.

In the Statement of Answer, Respondent requested that Claimants' Statement of Claim be dismissed with prejudice and that it be awarded costs, attorneys' fees, and other appropriate relief.

At the close of the hearing, Claimants requested \$441,338.73 in compensatory (statutory) damages, unspecified punitive damages, \$94,150.00 in attorneys' fees, and \$18,399 in costs and forum fees.

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

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

On the record at the hearing, Claimants withdrew their claims related to T. Benitone's IRA. The Panel did not adjudicate any claims involving T. Benitone's IRA.

On the record at the hearing, Claimants offered Exhibit 72, phone records specifically requested in discovery and which had been compelled by the Panel's Order, but not produced to Respondent prior to the hearing. Claimants' counsel explained that he had not realized the significance of the records prior to the hearing. Claimants' counsel is admonished by the Panel for this discovery violation herein.

The parties present at the hearing 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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent J.J.B. Hilliard, W.L. Lyons, LLC is liable for and shall pay to Claimants Troy D. Benitone and Elizabeth Benitone the sum of \$450,000.00 in compensatory damages.
2. Respondent J.J.B. Hilliard, W.L. Lyons, LLC is liable for and shall pay to Claimants Troy D. Benitone and Elizabeth Benitone the sum of \$100,000.00 in punitive damages pursuant to *Loitz v. Remington Arms Co.*, 138 Ill.2d 404 (Ill. 1990) (citing the Restatement (Second) of Torts § 908(2)); *State Farm Mutual Automotive Ins. Co. v. Campbell*, 123 S. Ct. 1513 (2003); and FINRA's Arbitrator's Guide, p. 68.

3. Respondent J.J.B. Hilliard, W.L. Lyons, LLC is liable for and shall pay to Claimants Troy D. Benitone and Elizabeth Benitone the sum of \$18,399.00 in costs.
4. Respondent J.J.B. Hilliard, W.L. Lyons, LLC is liable for and shall pay to Claimants Troy D. Benitone and Elizabeth Benitone the sum of \$300.00 as reimbursement for the non-refundable portion of Claimants' FINRA filing fee.
5. Any and all claims for relief not specifically addressed herein, including attorneys' fees, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	=\$ 1,425.00
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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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent J.J.B. Hilliard, W.L. Lyons, LLC is assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

#### **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

The Panel has assessed \$400.00 of the discovery-related motion fees to Respondent J.J.B. Hilliard, W.L. Lyons, LLC.

#### **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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session		= \$ 2,250.00
Pre-hearing conferences: October 14, 2016	1 session	
July 12, 2017	1 session	
Eight (8) hearing sessions @ \$1,125.00/session		= \$ 9,000.00
Hearing Dates: September 5, 2017	2 sessions	
September 6, 2017	2 sessions	
September 7, 2017	2 sessions	
September 8, 2017	2 sessions	
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Total Hearing Session Fees		= \$11,250.00

The Panel has assessed \$11,250.00 of the hearing session fees to Respondent J.J.B. Hilliard, W.L. Lyons, LLC.

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

**ARBITRATION PANEL**

David F. Barrett	-	Public Arbitrator, Presiding Chairperson
Janet M. Thompson	-	Public Arbitrator
Kim L. Kirn	-	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**

/s/ David F. Barrett  
David F. Barrett  
Public Arbitrator, Presiding Chairperson

09/22/17  
Signature Date

/s/ Janet M. Thompson  
Janet M. Thompson  
Public Arbitrator

09/22/17  
Signature Date

/s/ Kim L. Kirn  
Kim L. Kirn  
Public Arbitrator

09/22/17  
Signature Date

09/22/17  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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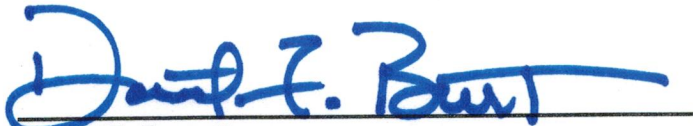
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**/s/ KIM L. KIRN**

**9-22-17**

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Public Arbitrator

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