

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

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In the Matter of the Arbitration Between:

Claimants  
Beverly Bien  
David H. Wellman

Case Number: 15-00333

vs.

Respondent  
Mid Atlantic Capital Corporation

Hearing Site: Denver, Colorado

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Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

Claimants Beverly Bien and David H. Wellman, hereinafter collectively referred to as "Claimants": Bruce D. Oakes, Esq. and Richard B. Fosher, Esq., Oakes & Fosher, LLC, St. Louis, Missouri

Respondent Mid Atlantic Capital Corporation, hereinafter referred to as "Respondent": Erin N. Fischer, Esq., Mid Atlantic Capital Group, Pittsburgh, Pennsylvania

**CASE INFORMATION**

Statement of Claim filed on or about: February 6, 2015

Amended Statement of Claim filed on or about: August 10, 2015

Claimants signed Submission Agreements: February 2, 2015

Statement of Answer filed by Respondent on or about: April 15, 2015

Amended Statement of Answer filed by Respondent on or about: August 31, 2015

Respondent signed the Submission Agreement: April 2, 2015

**CASE SUMMARY**

Claimants asserted the following causes of action in the Statement of Claim and Amended Statement of Claim: breach of fiduciary duty, negligence, negligent misrepresentation, omissions, violation of Colorado's Securities Act, common law fraud, breach of contract, restitution, and negligent supervision. The causes of action relate to

Claimants' investments in Sonoma Ridge Partners and KBS real estate investment trusts ("REIT"), and securities in Contango Oil and Gas, Inc., iShares Silver and Market Vectors Gold Miners.

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

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimants requested:

1. Compensatory damages in the amount of \$300,000.00;
2. Punitive damages;
3. Pre-judgment interest;
4. Reasonable attorneys' fees and costs;
5. Filing and forum fees; and
6. Such other and further relief which this Panel deems just and proper under the circumstances.

At the close of the hearing, Claimants requested initial investment losses and provided the Panel with several theories of appropriate compensatory damages that should be awarded.

In the Statement of Answer, as amended, Respondent requested:

1. Dismissal of all claims with prejudice;
2. Reasonable attorneys' fees and costs associated in defending against this action; and
3. Any further relief that the Panel deems just and proper.

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

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

On April 15, 2015, along with the Answer, Respondent filed a Motion for a More Definite Statement. On June 24, 2015, Claimants submitted a response opposing Respondent's motion. On July 1, 2015, Respondent submitted a reply in support of its motion. By order dated July 14, 2015, the Panel granted Respondent's motion and ordered Claimants to comply with the order by August 13, 2015. In response to the Panel's order, on August 10, 2015, Claimants submitted an Amended Statement of Claim.

On December 18, 2015, Respondent filed a Motion to Dismiss Pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On January 28, 2016, Claimants filed a response opposing Respondent's motion. On February 9, 2016, Respondent filed a reply in support of the motion. On March 16, 2016, the Panel held a recorded pre-hearing conference so the parties could present oral argument and evidence on Respondent's motion. By order dated March 23, 2016, the Panel denied Respondent's motion because the claims are not barred by the Colorado statute of limitations, and Claimants presented a legally sufficient evidentiary basis to support the claims.

As stated above, in the Amended Statement of Claim, Claimants' identified the following investments: Sonoma Ridge Partners and KBS REITs, and securities in Contango Oil and Gas, Inc., iShares Silver and Market Vectors Gold Miners. However, the Panel confirmed that during the hearing, the Claimants only discussed their investments in Sonoma Ridge Partners and KBS REITs.

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, 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 Claimant Beverly Bien an initial investment loss in the amount of \$240,321.00.
2. Respondent is liable for and shall pay to Claimant Beverly Bien compensatory damages in the amount of \$437,286.00.
3. Respondent is liable for and shall pay to Claimant Beverly Bien interest at the rate of 8% per annum beginning February 6, 2015 until the total amount of \$677,607.00 (total of paragraphs 1 and 2 above) is paid in full.
4. Respondent is liable for and shall pay to Claimants an initial investment loss in the amount of \$52,090.00, plus interest at the rate of 8% per annum beginning February 6, 2015 until the amount of \$52,090.00 is paid in full.
5. Respondent is liable for and shall pay to Claimant David H. Wellman compensatory damages in the amount of \$47,397.00, plus interest at the rate of 8% per annum beginning February 6, 2015 until the amount of \$47,397.00 is paid in full.
6. Respondent is liable for and shall pay to Claimants attorneys' fees in the amount of \$118,560.00, pursuant to U.S. Offshore, Inc. v. Seabulk Offshore, Ltd., 753 F. Supp. 86, 92 (S.D.N.Y. 1990), Marshall Co., Inc. v. Duke, 114 F.3d 188 (11<sup>th</sup> Cir. 1997).
7. Respondent is liable for and shall pay to Claimants costs in the amount of \$26,812.82.
8. Claimants must reassign ownership of all Sonoma Ridge Partners and KBS REIT investments to Respondent.
9. Respondent's request for attorneys' fees is denied.
10. Any and all claims for relief not specifically addressed herein, including punitive damages, are denied.

## FEES

Pursuant to the Code, 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Mid Atlantic Capital Corporation is assessed the following:

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

### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 10 – 13, 2016, adjournment by parties	=\$ 1,125.00
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Total Adjournment Fees	=\$ 1,125.00
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The Panel has assessed the \$1,125.00 adjournment fees to Respondent.

### Discovery-Related Motion Fee

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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Total Discovery-Related Motion Fee	=\$ 200.00
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The Panel has assessed the \$200.00 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), 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: June 23, 2015	1 session
March 16, 2016	1 session

Twelve (12) hearing sessions @ \$ 1,125.00/session		= \$13,500.00
Hearing Dates:	November 1, 2016	2 sessions
	November 2, 2016	2 sessions
	November 3, 2016	2 sessions
	November 4, 2016	2 sessions
	November 30, 2016	2 sessions
	December 1, 2016	2 sessions
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Total Hearing Session Fees		= \$15,750.00

The Panel has assessed the \$15,750.00 hearing session fees to Respondent.


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

**ARBITRATION PANEL**

Thaddeus J. Tecza	-	Public Arbitrator, Presiding Chairperson
Mari C. Bush	-	Public Arbitrator
Jo-Marie Lisa	-	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**

  
\_\_\_\_\_  
Thaddeus J. Tecza  
Public Arbitrator, Presiding Chairperson

12/12/2015  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Mari C. Bush  
Public Arbitrator

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

\_\_\_\_\_  
Jo-Marie Lisa  
Public Arbitrator

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

December 13, 2016  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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



12-12-16

\_\_\_\_\_  
Mari C. Bush  
Public Arbitrator

\_\_\_\_\_  
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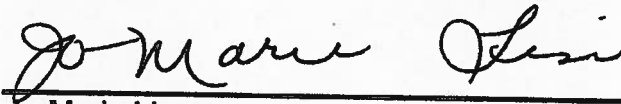
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