

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Cynthia A. Burch

Case Number: 17-02936

vs.

Respondent
Huntleigh Securities Corporation

Hearing Site: St. Louis, Missouri

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Cynthia A. Burch (“Claimant”): Bruce D. Oakes, Esq. and Richard B. Fosher, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

For Respondent Huntleigh Securities Corporation (“Respondent”): Patrick A. Watts, Esq., Watts Law Group, LLC, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: November 1, 2017.
Claimant signed the Submission Agreement: October 23, 2017.

Statement of Answer filed on or about: January 12, 2018.
Respondent signed the Submission Agreement: January 11, 2018.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, common law fraud, negligence/negligent misrepresentation/omission, violation of Missouri’s Securities Act Sect. 409-5.501 et al, breach of contract, unjust enrichment, and negligent supervision. The causes of action relate to Claimant’s allegation that Respondent, through its registered representative, while managing a discretionary account on behalf of Claimant and contrary to Claimant’s investment objectives and risk tolerance, invested Claimant’s assets in highly speculative, high-risk stocks and options, leveraged Claimant’s accounts on margin, and engaged in excessive trading.

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, Claimant requested compensatory damages of approximately \$750,000.00, punitive damages, attorneys' fees, interest and costs, filing and forum fees incurred, and such other and further relief as the Panel deems just and proper under the circumstances.

In the Statement of Answer, Respondent requested that the Panel enter an award in its favor, dismissing Claimant's Statement of Claim and awarding any and all other relief as the Panel deems just and appropriate.

At the hearing, Claimant requested compensatory damages of \$585,806.00, \$708,378.00, or \$953,522.00, alternatively. The alternative amounts were formulated using three varying mixes of fixed income and equity securities and based on overall stock market performance for the relevant years.

OTHER ISSUES CONSIDERED AND DECIDED

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

On July 2, 2018, Respondent filed a Motion to Dismiss Pursuant to Rule 12206 ("Motion to Dismiss"). On August 15, 2018, Claimant filed a Response to the Motion to Dismiss. On September 4, 2018, during a pre-hearing conference, the Panel heard oral arguments on Respondent's Motion to Dismiss. In its Order dated September 4, 2018, the Panel denied Respondent's Motion to Dismiss.

On November 7, 2019, Respondent filed a Motion for Sanctions for Failure to Comply with Discovery Order ("Motion for Sanctions"). On November 25, 2019, Claimant filed a Response to the Motion for Sanctions. On January 2, 2020, Respondent requested that the Panel hold the Motion for Sanctions in abeyance until the evidentiary hearing. Respondent did not raise the Motion for Sanctions at the hearing and the Motion for Sanctions is hereby denied.

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 evidence presented at the hearing, and the 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 Claimant the sum of \$300,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$200,000.00 in punitive damages pursuant to *Stojkovic v. Weller*, 802 S.W.2d 152 (Mo. 1991); *State Farm Mutual Automobile Ins. Co. v. Campbell*, 123 S. Ct. 1513

(2003); *Davis v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 906 F.2d 1206 (8th Cir. 1990); and *Miley v. Oppenheimer & Co., Inc.*, 637 F.2d 318 (5th Cir. 1981).

3. Respondent is liable for and shall pay to Claimant the sum of \$250,000.00 in attorneys' fees pursuant to Missouri Securities Act, Sec. 409.5-509; *McDaniel v. Bear Stearns & Co.*, 196 F. Supp. 2d, 343 (S.D.N.Y. 2002); and *First Interregional Equity Corp. v. Haughton*, 842 F. Supp. 105 (S.D.N.Y. 1994).
4. Other than forum fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter.
5. Any and all claims for relief not specifically addressed herein 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	=\$ 1,725.00
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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 person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent is 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:

March 19-22, 2019, postponement requested by Respondent	=\$ 1,300.00
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Total Postponement Fees	=\$ 1,300.00
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The Panel has assessed \$1,300.00 of the adjournment 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:

One (1) pre-hearing session with a single arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing Conference: March 8, 2019		1 session

Four (4) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$	5,200.00
Pre-hearing Conferences: April 25, 2018		1 session
April 30, 2018		1 session
September 4, 2018		1 session
March 12, 2019		1 session

Seven (7) hearing sessions @ \$1,300.00/session	= \$	9,100.00
Hearing Dates: January 21, 2020		2 sessions
January 22, 2020		2 sessions
January 23, 2020		2 sessions
January 24, 2020		1 session

Total Hearing Session Fees	= \$	14,750.00
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The Panel has assessed \$6,075.00 of the hearing session fees to Claimant.

The Panel has assessed \$8,675.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Philip J. Glick	-	Public Arbitrator, Presiding Chairperson
William M. Azkoul	-	Public Arbitrator
Sheldon Weinhaus	-	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 Philip J. Glick

03/03/2020

Philip J. Glick
Public Arbitrator, Presiding Chairperson

Signature Date

/s William M. Azkoul

03/05/2020

William M. Azkoul
Public Arbitrator

Signature Date

/s Sheldon Weinhaus

03/04/2020

Sheldon Weinhaus
Public Arbitrator

Signature Date

March 05, 2020

Date of Service (For FINRA Office of Dispute Resolution office use only)