

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Ronald J. Inlow

Case Number: 22-01360

vs.

Respondents
Michael Barrows
Eric J. Ludovico
Mark Stewart

Hearing Site: Los Angeles, California

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: Customer vs. Associated Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimant Ronald J. Inlow: Kalju Nekvasil, Esq, Goodman & Nekvasil, P.A., St. Petersburg, Florida.

For Respondents Michael Barrows (“Barrows”) and Eric J. Ludovico (“Ludovico”): Justin Chretien, Esq., Carlton Fields, PA, Washington, District of Columbia.

For Respondent Mark Stewart (“Stewart”): Nicholas J. Yocca, Nick Yocca Law Firm, Dana Point, California.

Hereinafter, Barrows, Ludovico, and Stewart will collectively be referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: June 17, 2022.

Claimant signed the Submission Agreement: April 10, 2022.

Statement of Answer filed by Respondents on or about: October 16, 2022.

Barrows signed the Submission Agreement: September 13, 2022.

Ludovico signed the Submission Agreement: September 13, 2022.

Stewart signed the Submission Agreement: September 13, 2022.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: violations of federal securities laws; violations of California securities laws; violations of California Unfair, Unlawful, and Fraudulent Business Practices; breach of contract; common law fraud; breach of fiduciary duty; and negligence and gross negligence. The causes of action relate to GWG Holdings, Inc. L Bonds.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Actual damages;
2. Rescissionary damages;
3. Compensatory damages;
4. Benefit of the bargain damages;
5. Lost opportunity costs;
6. Model portfolio damages;
7. Prejudgment interest;
8. Interest at the legal rate;
9. Costs;
10. Attorneys' fees;
11. Non-economic damages;
12. Punitive damages in an amount to be determined by the Panel;
13. Recovery of damages in an amount to be determined by the Panel; and
14. Such other relief as is deemed proper and necessary.

In the Statement of Answer, Respondents requested:

1. The Panel enter an award in Respondents' favor;
2. Claimant's Statement of Claim be denied in its entirety with prejudice;
3. All forum costs be assessed against Claimant;
4. Attorneys' fees and experts' fees; and
5. Such other and further relief as the Panel deems just and appropriate.

Respondents filed a request for expungement of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 1, 2023, Respondents filed a Motion for Expungement. On September 8, 2023, Claimant filed an opposition to the Motion for Expungement.

During the recorded evidentiary hearing, after Claimant's case in chief, Respondents moved for dismissal of Claimant's claims based on failure to present evidence to state a claim and that evidence presented established a defense based on the applicable statute of limitations. The Panel deferred the decision on the motion until the conclusion of the hearing. The Panel hereby denies the motion.

The Panel has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

The Award in this matter may be executed in counterpart copies.

FINDINGS

The Panel considered and ruled on the various claims and defenses asserted by the Parties in their pleadings and as presented at the evidentiary hearing as follows:

Claimant's First Claim for Relief (Federal Securities Laws)

1. The evidence at the hearing did not establish any claim under the Securities Act of 1933 in that there was no evidence of any false statements or omissions being made by the issuer of the security (GWG Holdings, Inc.).
2. The Panel finds as follows:
 - a. Claimant has proven, by a preponderance of the evidence, a violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder against Respondent Michael Barrows.
 - b. Claimant has proven, by a preponderance of the evidence, liability under Section 20(a) of the Securities Exchange Act of 1934 for the violation of Rule 10b-5, as a controlling person, against Respondent Eric J. Ludovico.
 - c. Claimant has not proven a claim for violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder or as a controlling person under Section 20(a) of the Securities Exchange Act of 1934 against Respondent Michael Stewart.

[Note: In making this determination, the Panel concluded that, on the basis of the evidence presented, Claimant did not show by a preponderance of the evidence that the securities in question in this case (GWG L-Bonds) was unsuitable for all customers, but did show by a preponderance of the evidence that such securities were unsuitable for Claimant Ronald J. Inlow in the quantities purchased.]

Authorities reviewed include: Section 20(a) of the Exchange Act, Weller v. Scout Analytics, Inc., 230 F. Supp. 3d 1085, 1096 (N.D. Cal. 2017); Zucco Partners, LLC v. Digimarc Corp., 552 F.3d 981, 990 (9th Cir. 2009); Commodity Futures Trading Comm'n v. Monex Credit Co., No. SACV171868JVSDFMX, 2020 WL 1625808, at *4 (C.D. Cal. Feb. 12, 2020).

Claimant's Second Claim for Relief – Violation of California Corp. Code sections 25501 and 25504

A required element of a claim under California Corporations Code Sections 25501 and 25504 is a material misstatement or omission by the issuer of a security – in this case, GWG Holdings, Inc., aided and abetted by the broker/dealer or registered representative in the sale thereof. A separate misstatement or omission by the broker/dealer or registered representative not made by the issuer does not constitute a violation of the California State Securities Laws. Lubin v. Sybedon Corp., 688 F. Supp. 1425, 1453 (S.D. Cal. 1988); S.E.C. v. Seaboard Corp., Admiralty Fund v Jones, 677 F.2d 1289, 1296 (9th Cir.1982).

The Panel finds that Claimant has not proven by a preponderance of evidence that GWG Holdings, Inc., made a fraudulent statement or material omission regarding its L-Bond offering, either in its offering materials or otherwise to Claimant.

Claimant's Third Claim for Relief – Violation of California's Unfair Business Practice Act, Business and Professions Code Sections 17200 et. seq.

Under California law, unfair business practices include “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.” Bus. & Prof. Code § 17200. To be encompassed within the scope of this law, the violation must involve an ongoing business practice, rather than a “one-off” incident. Hewlett v. Squaw Valley Ski Corp., 54 Cal. App. 4th 499, 519, (1997).

The relief available under the California Unfair Business Practice Act is restitution of money lost by claimant and acquired by respondent(s). Kwikset Corp. v. Superior Court, 51 Cal.4th 310, 335–36, (2011); Fresno Motors, LLC v. Mercedes Benz USA, LLC, 771 F.3d 1119, 1135 (9th Cir. 2014).

The Panel finds that Claimant has not proven, by a preponderance of evidence, that Respondents Michael Barrows and Eric J. Ludovico, or either of them, engaged in an on-going “unfair business practice”, as defined by Business and Professions Code § 17200.

The Panel further finds that Claimant has not proven by a preponderance of the evidence that Respondent Mark Stewart personally received any funds from Claimant on which an award of restitution can be made.

Claimant's Fourth Claim for Relief – For Breach of Contract

Claimant asserted the existence of two contracts as the basis of this claim:

- a. The contracts between Claimant Ronald J. Inlow and ACG, as documented in the “New Account Forms” executed by Claimant on September 26, 2018.
- b. Respondents’ oaths and agreements to submission to FINRA rules and regulations, to which Claimant asserts he is a third party beneficiary.

1. Contracts with ACG:

None of Respondents are, as individuals, parties to these contracts. Thus, they can be found liable for any breaches of contract by ACG if the individuals are found to be the “alter-egos” of ACG - that is, if the individuals treated the assets of ACG as their own, intermingled their personal assets with the assets of ACG, or engaged in other conduct which would allow Respondents to be considered as alter-egos of ACG.

The Panel finds that Claimant did not prove by a preponderance of the evidence that any of Respondents were the alter-egos of ACG.

2. Claimants’ Agreements with FINRA:

Under California law, the right of a person who is not a party to a contract to enforce that contract is governed by California Civil Code Section 1559, which states: “A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.” Under California law, a non-signatory is a third-party beneficiary only to a contract “made expressly for [its] benefit.” a third party that “only incidentally or remotely benefit[s]” from a contract does not meet this standard. Ngo v. BMW of N. Am., LLC, 23 F.4th 942, 946 (9th Cir. 2022). The test for determining whether a contract was made for the benefit of a third person is whether an intent to benefit a third person appears from the terms of the contract. If the terms of the contract necessarily require the promisor to confer a benefit on a third person, then the contract, and hence the parties thereto, contemplate a benefit to the third person. Spinks v. Equity Residential Briarwood Apartments, 171 Cal. App. 4th 1004, 1021–25, (2009).

The Panel finds that the preponderance of the evidence presented at the hearing and post-hearing briefing indicates that the primary intent of Respondents’ submission agreements with FINRA was to bring Respondents (as licensed professionals working in the securities industry) under the supervisory and disciplinary rules, regulations, and procedures of FINRA. Purchasers of securities (a class of persons of which Claimant is a member) are incidental, but not direct, benefits of any contractual arrangements between FINRA and Respondents.

Claimant’s Fifth Claim for Relief – Common Law Fraud

The elements of this claim are essentially the same as Claimants’ First Claim for Relief. The discussion concerning Claimant’s First Claim for Relief is repeated and incorporated herein by this reference.

The Panel finds that Claimant has not proven, by a preponderance of the evidence, that any material misstatements or omissions made to Claimant during the course of his purchase of the securities at issue were made pursuant to a conspiracy, or that they were culpably aided and abetted by Respondent Michael Stewart.

Claimant’s Sixth Claim for Relief – Breach of Fiduciary Duty

Under California law, based on the preponderance of evidence presented at the hearing, Claimant Ronald J. Inlow had a fiduciary relationship with Respondent Michael Barrows, but not with Respondents Eric J. Ludovico or Michael Stewart.

The Panel finds that Claimant has proven, by a preponderance of the evidence, that Respondent Michael Barrows has breached his fiduciary duty to Claimant Ronald J. Inlow in the sale of the securities at issue.

Claimant's Seventh Claim for Relief – Negligence

The elements of a claim for negligence are: (a) the existence of a duty of care, (b) respondent's failure to exercise that duty of care; (c) the foreseeability of damage to claimant in the failure to exercise that duty of care, and (e) damage to claimant caused by the respondent's failure to exercise that duty of care.

The Panel finds that Claimant has proven, by a preponderance of evidence, each of the elements of a claim for negligence against Respondents Michael Barrows and Eric J. Ludovico, but that claims based on negligence are superseded by claims based on violations of Section 10b-5 and common law fraud, discussed above.

The Panel finds that Claimant has proven, by a preponderance of evidence, that Respondent Michael Stewart was negligent with respect to his failure to adequately review and update his review of alternative investments on ACG's "approved list", but has not proven that such failure was a proximate cause of the damages incurred by Claimant in that he has not proven, by a preponderance of evidence, that such negligence was the proximate cause of GWG L Bonds remaining on ACG's "approved list" as of the date of Claimant's purchases, in that the preponderance of evidence does not establish that such securities were not suitable for any customers, even if unsuitable for Claimant in the volumes purchased by him. The Panel also finds that the preponderance of the evidence established that Respondent Michael Stewart could have reasonably foreseen the likelihood that Respondents Michael Barrows and Eric J. Ludovico would act improperly in their determination of "customer specific suitability" with respect to the sale of GWG L Bonds to Claimant.

Damages

The Panel finds that Claimant Ronald J. Inlow is entitled to an award of damages against Respondents Michael Barrows and Eric J. Ludovico, jointly and severally, in the amount of \$1,035,360.46 (plus interest thereon at 7% per annum from August 1, 2023 through the date of the award).

Claimant's Motion for Attorneys' Fees

Under California law, attorneys' fees may be awarded only if authorized by contract or by statute.

Claimant did not present into evidence any contract to which Claimant was a party or third party beneficiary providing for the recovery of attorneys' fees by the prevailing party.

The only claim asserted by Claimant which provides a statutory basis for recovery of attorneys' fees was the claim under California Corporations Code Sections 25501 and 25504. As discussed above, Claimant did not prevail on that claim.

Respondents' Motion for Attorneys' Fees

The Panel denies Respondents' requests for an award of attorneys' fees or other relief.

Respondents' Requests for Expungement of Claimant's Claim from Respondents' Records

The criteria for expungement are:

1. The claim, allegation or information is factually impossible or clearly erroneous;
2. The associated person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds; or
3. The claim, allegation or information is false.

The Panel finds that none of Respondents proved, by a preponderance of the evidence, that any of the three criteria were met by any of Respondents.

Respondents' requests for expungement are denied.

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. Respondents Barrows and Ludovico are jointly and severally liable for and shall pay to Claimant the sum of \$1,035,360.46 in compensatory damages, which includes interest from October 2, 2018 through July 31, 2023 at 7% per annum.
2. Respondents Barrows and Ludovico are jointly and severally liable for and shall pay to Claimant interest on the above-stated sum at the rate of 7% per annum from August 1, 2023 through the date of this Award.
3. All Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$10,655.68 in costs.
4. All Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$400.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
5. Barrows' request for expungement of the above-captioned arbitration (Occurrence Number 2247853) from registration records maintained by the CRD is denied.
6. Ludovico's request for expungement of the above-captioned arbitration (Occurrence Number 2247841) from registration records maintained by the CRD is denied.
7. Stewart's request for expungement of the above-captioned arbitration (Occurrence Number 2225773) from registration records maintained by the CRD is denied.
8. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, 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	=\$ 1,600.00
Expungement Filing Fee	=\$ 1,600.00
Expungement Filing Fee	=\$ 1,600.00
Expungement Filing Fee	=\$ 1,600.00

**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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as Respondent’s former firm, Accelerated Capital Group is assessed the following:

Member Surcharge	=\$ 2,000.00
Member Process Fee	=\$ 3,850.00

Discovery-Related Motion Fees

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

Three (3) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	=\$ 600.00
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Claimant submitted Two (2) discovery-related motions
Respondents submitted One (1) discovery-related motion

Total Discovery-Related Motion Fees	=\$ 600.00
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The Panel has assessed \$250.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$350.00 of the discovery-related motion fees jointly and severally to Respondents.

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 the Panel @ \$1,150.00/session	
Pre-Hearing Conference: November 21, 2022 1 session	=\$ 1,150.00
Seventeen (17) hearing sessions @ \$1,150.00/session	=\$ 19,550.00
Hearings: September 11, 2023 2 sessions	

September 12, 2023	2 sessions
September 13, 2023	2 sessions
September 14, 2023	2 sessions
September 15, 2023	2 sessions
September 18, 2023	2 sessions
September 19, 2023	2 sessions
September 20, 2023	2 sessions
September 28, 2023	1 session

Total Hearing Session Fees = \$ 20,700.00

The Panel has assessed the total hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Stephen Howard Marcus	-	Public Arbitrator, Presiding Chairperson
Jason Moriarty	-	Public Arbitrator
Lawrence Wayne Sarokin	-	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

Stephen Howard Marcus

Stephen Howard Marcus
Public Arbitrator, Presiding Chairperson

10/27/2023

Signature Date

Jason Moriarty

Jason Moriarty
Public Arbitrator

10/28/2023

Signature Date

Lawrence Wayne Sarokin

Lawrence Wayne Sarokin
Public Arbitrator

10/30/2023

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.

October 30, 2023

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