

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

H. Keith Melton, Individually and as Authorized Representative of H.K.M. Investments, Inc., Confidential Communications Consultants, Inc., H.K.M. Nevada, LTD, CUB Melton Properties, LLC, H.K.M. Nevada, LP and Melton Management, Inc. H. Keith Melton as Trustee of The H. Keith Melton Grantor Trust

Case Number: 14-00829

vs.

Respondents

Morgan Stanley Smith Barney, LLC
Paul William Shoemaker
Quin J. Gardner
Kim Dee Isaacson
Amie T. Thompson

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customers vs. Member and Associated Persons

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants H. Keith Melton (“Melton”), Individually and as Authorized Representative of H.K.M. Investments, Inc., Confidential Communications Consultants, Inc., H.K.M. Nevada, LTD, CUB Melton Properties, LLC, H.K.M. Nevada, LP and Melton Management, Inc., and H. Keith Melton as Trustee of The H. Keith Melton Grantor Trust: Andrew J. Mytelka, Esq. and Jeannie M. Urbani, Esq., Greer, Herz & Adams, L.L.P., Galveston, Texas.

For Respondents Morgan Stanley Smith Barney, LLC (“MSSB”) and Paul William Shoemaker (“Shoemaker”): Joe Coates, Esq., Beth A. Black, Esq. and Alex J. Rosenthal, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

For Respondents Quin J. Gardner (“Gardner”), Kim Dee Isaacson (“Isaacson”) and Amie T. Thompson (“Thompson”): Daniel D. Hill, Esq., Snow, Christiansen & Martineau, P.C., Salt Lake City, Utah.

CASE INFORMATION

Statement of Claim filed on or about: March 13, 2014.

Confidential Communications Consultants, Inc. signed the Submission Agreement: March 12, 2014.

CUB Melton Properties, LLC signed the Submission Agreement: March 12, 2014.

H.K.M. Investments, Inc. signed the Submission Agreement: March 12, 2014.

H.K.M. Nevada, LP signed the Submission Agreement: March 12, 2014.

H.K.M. Nevada, LTD signed the Submission Agreement: March 12, 2014.

H. Keith Melton signed the Submission Agreement: March 12, 2014.

Melton Management, Inc. signed the Submission Agreement: March 12, 2014.

The H. Keith Melton Grantor Trust signed the Submission Agreement: March 12, 2014.

Answer and Defenses filed by Respondents MSSB and Shoemaker on or about: June 9, 2014.

Paul William Shoemaker signed the Submission Agreement: June 6, 2014.

Morgan Stanley Smith Barney, LLC signed the Submission Agreement: June 9, 2014.

Answer filed by Respondents Gardner, Isaacson and Thompson on or about: May 27, 2014.

Quin J. Gardner signed the Submission Agreement: May 21, 2014.

Kim Dee Isaacson signed the Submission Agreement: May 21, 2014.

Amie T. Thompson signed the Submission Agreement: May 21, 2014.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; common law fraud; negligence and gross negligence; negligent supervision; breach of contract; suitability; unauthorized trading; and violation of New York General Business Law §349(A). The causes of action relate to Claimants' investments in numerous securities including, but not limited to, Petrobras stock and gold vectors and Respondent Isaacson's alleged misrepresentations to Claimant Melton concerning Claimants' account balances.

Unless specifically admitted in their Answers, Respondents MSSB, Shoemaker, Gardner, Isaacson and Thompson denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested actual damages in excess of \$10,000,000.00, pre and post-judgment interest as provided by law, punitive damages, disgorgement of all fees, attorneys' fees and legal expenses, costs of bringing this arbitration, and such other and further relief, both general and special, legal and equitable, to which Claimants showed themselves justly entitled.

At the close of the hearing, Claimants requested disgorgement of fees totaling \$993,989.00 and compensatory damages between \$8,095,745.00 and \$11,658,465.00.

In their Answer, Respondents MSSB and Shoemaker requested denial of Claimants' claims in their entirety and expungement of this matter from Respondent Shoemaker's Central Registration Depository ("CRD") records.

In their Answer, Respondents Gardner, Isaacson and Thompson requested: dismissal of Claimants' Statement of Claim with prejudice; interest, costs, expenses and attorneys' fees; all filing fees, session deposits and other costs and expenses associated with the pursuit of this matter; and all other and further relief the Panel deemed fitting and appropriate.

At the close of the hearing, Respondent Thompson requested expungement of this matter from her CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

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

On or about October 1, 2015, Claimants advised FINRA Dispute Resolution that they reached a settlement with Respondent Gardner and dismissed their claims against Respondent Gardner with prejudice. Accordingly, the Panel made no determinations with respect to the requests against Respondent Gardner contained in the Statement of Claim.

During the recorded in-person evidentiary hearing, at the close of Claimants' case-in-chief, Claimants made a Motion for Directed Verdict which Respondents opposed. The Panel reserved decision until the conclusion of the case. During the Panel's post-hearing deliberations, the Panel denied the Motion.

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 recorded, in-person hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Isaacson and MSSB are liable, jointly and severally, for failure to supervise, negligent supervision, breach of fiduciary duty, unsuitable investments and fraud. The Panel found that Respondent Isaacson testified he lied to Claimant Melton about the balances in his portfolio and that he knew that Claimant Melton relied on his oral representations. Respondent MSSB perpetuated the fraud by failing to supervise and monitor the ongoing fraud over a period of four years. Respondents Isaacson and MSSB shall pay to Claimants \$993,989.00 as disgorgement of brokerage fees and commissions paid by Claimants to Respondent MSSB and \$2,593,000.00 representing the difference between the actual account balance and the value verbally reported to Claimant Melton by Respondent Isaacson.
2. Respondents Isaacson and MSSB shall pay to Claimants interest on the foregoing amounts accruing at the Florida statutory rate from the date of the Award until the

date of payment of the Award in full.

3. The explanation by the Panel of their decision in this Award, is for the information of the parties only and is not precedential in nature.
4. Claimants' claims against Respondents Thompson and Shoemaker are denied in their entirety.
5. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Thompson (CRD #2002059) and Shoemaker's (CRD #3099873) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, Respondents Thompson and Shoemaker must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative finding of fact as to Respondents Thompson and Shoemaker:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Panel has made the above Rule 2080 finding based on the following reasons:

The Panel grants expungement for Respondent Thompson because it appeared from testimony at the evidentiary hearing that she was not involved in the misrepresentation of the value of Claimants' holdings. Respondent Thompson was Respondent Isaacson's assistant who answered a call and gave Claimant Melton accurate information about his holdings.

The Panel further grants expungement to Respondent Shoemaker because he became the branch manager three years after Respondent Isaacson began deceiving Claimant Melton about the value of his holdings and it was clear from the testimony at the evidentiary hearing that he only became involved after Respondent Isaacson's deception came to light.

The involvement of Respondents Thompson and Shoemaker was de minimis. The testimony at the evidentiary hearing was unambiguous that Respondent Thompson answered a phone call from Claimant Melton when Respondent Isaacson was away from the office and gave accurate information to Claimant Melton. The testimony was equally clear that Respondent Shoemaker was not involved in any way with Respondent Isaacson's deception in misleading Claimant Melton as to the value of his holdings. The Panel noted that Claimants did not oppose the requests for expungement.

In making the above findings, the Panel: reviewed Respondents Thompson and Shoemaker's BrokerCheck records; reviewed the settlement documents related to Claimants' settlement with Respondent Gardner; considered the amounts paid to any party; and considered any other relevant terms and conditions of the settlement. The Panel found that Respondents Thompson and Shoemaker did not contribute to the settlement amount and that no party conditioned settlement of the arbitration upon an agreement not to oppose Respondents Thompson and Shoemaker's request for expungement.

6. Any and all claims for relief not specifically addressed herein, including Claimants' requests for attorneys' fees and punitive damages and Respondents Isaacson and Thompson's request for attorneys' fees, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee = \$ 1,800.00

**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 MSSB is assessed the following:

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| Member Surcharge | = \$ 3,750.00 |
| Pre-Hearing Processing Fee | = \$ 750.00 |
| Hearing Processing Fee | = \$ 5,500.00 |

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:

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| Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session | = \$ 2,400.00 |
| Pre-hearing conferences: August 27, 2014 | 1 session |
| April 16, 2015 | 1 session |

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| Twenty-two (22) Hearing sessions @ \$1,200.00/session | =\$26,400.00 |
| Hearing Dates: October 26, 2015 | 2 sessions |
| October 27, 2015 | 2 sessions |
| October 28, 2015 | 2 sessions |
| October 29, 2015 | 2 sessions |
| October 30, 2015 | 2 sessions |
| March 14, 2016 | 2 sessions |

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| March 15, 2016 | 2 sessions |
| March 16, 2016 | 2 sessions |
| March 17, 2016 | 2 sessions |
| May 16, 2016 | 2 sessions |
| May 17, 2016 | 2 sessions |

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| Total Hearing Session Fees | = \$28,800.00 |
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The Panel has assessed the total hearing session fees of \$28,800.00 jointly and severally to Respondents MSSB and Isaacson.

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

ARBITRATION PANEL

Carl Shechter - Public Arbitrator, Presiding
Chairperson

Lisa Marie Macci - Public Arbitrator

Andrea R. Jacobs - 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' Signature

Carl Shechter /cs/

June 15, 2016

Carl Shechter
Public Arbitrator, Presiding Chairperson

Signature Date

Lisa Marie Macci
Public Arbitrator

Signature Date

Andrea R. Jacobs
Public Arbitrator

Signature Date

June 16, 2016

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

ARBITRATION PANEL

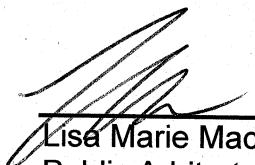
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|------------------|---|--|
| Carl Shechter | - | Public Arbitrator, Presiding Chairperson |
| Lisa Marie Macci | - | Public Arbitrator |
| Andrea R. Jacobs | - | Public Arbitrator |

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 Shechter
Public Arbitrator, Presiding Chairperson

Signature Date



Lisa Marie Macci
Public Arbitrator

6/15/16

Signature Date

Andrea R. Jacobs
Public Arbitrator

Signature Date

June 16, 2016

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

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| Andrea R. Jacobs | - | Public Arbitrator |

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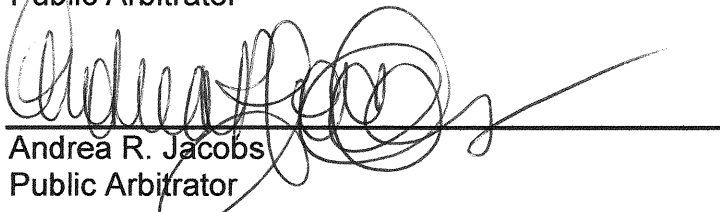
Concurring Arbitrators' Signatures

Carl Shechter
Public Arbitrator, Presiding Chairperson

Signature Date

Lisa Marie Macci
Public Arbitrator

Signature Date



Andrea R. Jacobs
Public Arbitrator



Signature Date

June 16, 2016

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