

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Sandra C. Alford, Individually and as
Trustee of the Sandra C. Alford Revocable
Living Trust

Case Number: 17-02420

vs.

Respondent
National Planning 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 Sandra C. Alford, Individually and as Trustee of the Sandra C. Alford Revocable Living Trust ("Claimant"): Bruce D. Oakes, Esq. and Richard B. Foshier, Esq., Oakes & Foshier, LLC, St. Louis, Missouri.

For Respondent National Planning Corporation ("Respondent"): Jason A. Kempf, Esq. and Kaitlyn Parker, Esq., Bryan Cave Leighton Paisner LLP, St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2017.
Claimant signed the Submission Agreement: August 29, 2017.

Statement of Answer filed on or about: January 29, 2018.
Respondent signed the Submission Agreement: September 18, 2017.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: respondeat superior, breach of fiduciary duty, violation of Missouri's Securities Act § 409-5.501 et al., negligence/negligent misrepresentation/omission, common law fraud, breach of contract, and negligent supervision. The causes of action relate to Claimant's allegations that Respondent's registered representative, an unnamed party, invested Claimant's assets in two fraudulent promissory notes and recommended other unsuitable investments, including non-traded real estate investment trusts and variable annuities, for the sole purpose of generating commissions and fees to benefit the unnamed party and Respondent.

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 \$1,000,000.00, punitive damages, pre-judgment interest, attorneys' fees and costs, reimbursement of FINRA filing and forum fees, and such other and further relief as the Panel deems just and proper.

In the Statement of Answer, Respondent requested that the Panel dismiss all claims against Respondent with prejudice, award Respondent its costs and fees, and confer such other and further relief as the Panel deems just and proper.

In Claimant's Final Prayer for Relief, Claimant requested compensatory damages based on alternate calculations as follows: S&P Standard Index (\$3,702,282.99), "80/20" Mix Allocation (\$3,113,335.00), "60/40" Mix Allocation (\$2,524,389.00), "50/50" Mix Allocation (\$2,229,916.00), or Market Adjusted (Benchmark) damages based solely on original variable annuity investments (\$1,663,084.00); punitive damages in a multiple of compensatory damages which the Panel deems just and proper; interest at the rate of 9%; attorneys' fees; and \$45,830.03 in costs.

OTHER ISSUES CONSIDERED AND DECIDED

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

At the hearing, the parties 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 \$1,583,443.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant the sum of \$1,000,000.00 in punitive damages pursuant to Johnson v. Allen, 448 S.W.2d 265 (Mo. Appellate Court (1969)); Stojkovic v. Weller, 802 S.W.2d 152 (Mo. 1991); Hoover's Dairy, Inc. v. Mid-American Dairymen, 700 S.W.2d 426 (Mo. banc 1985); McKeehan v. Wittles, 508 S.W.2d 277 (Mo. Ct. App. 1974); and Rodriguez v. Suzuki Motor Corp., 936, S.W.2d 104 (Mo. 1996).
3. Respondent is liable for and shall pay to Claimant the sum of \$45,830.03 in costs.

4. 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	= \$ 1,725.00
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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(s) that employed the associated person(s) at the time of the event(s) 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:

January 28-February 1, 2019, postponement requested jointly by the parties	= \$ 1,300.00
October 21-24, 2019, postponement requested by Claimant	WAIVED
<hr/> Total Postponement Fees	<hr/> = \$ 1,300.00

The Panel has assessed \$650.00 of the postponement fees to Claimant.
The Panel has assessed \$650.00 of the postponement fees to Respondent.

Discovery-Related Motion Fees

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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Respondent submitted one discovery-related motion

<hr/> Total Discovery-Related Motion Fees	<hr/> = \$ 200.00
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The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.
The Panel has assessed \$100.00 of the 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:

One (1) pre-hearing session with the Panel @ \$1,300.00/session = \$ 1,300.00
Pre-hearing Conference: March 1, 2019 1 session

Seven (7) hearing sessions @ \$1,300.00/session = \$ 9,100.00
Hearing Dates: November 18, 2019 2 sessions
November 19, 2019 2 sessions
November 20, 2019 2 sessions
November 21, 2019 1 session

Total Hearing Session Fees = \$10,400.00

The Panel has assessed \$5,200.00 of the hearing session fees to Claimant.
The Panel has assessed \$5,200.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Albert J. Haller	-	Public Arbitrator, Presiding Chairperson
Philip J. Glick	-	Public Arbitrator
Joshua Eric Lubatkin	-	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

Albert J. Haller

Albert J. Haller
Public Arbitrator, Presiding Chairperson

01/06/2020

Signature Date

Philip J. Glick

Philip J. Glick
Public Arbitrator

01/06/2020

Signature Date

Joshua Eric Lubatkin

Joshua Eric Lubatkin
Public Arbitrator

01/07/2020

Signature Date

January 07, 2020

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