

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Beverley B. Schottenstein, Individually and as Co-Trustee under the Beverley B. Schottenstein Revocable Trust U/A/D April 5, 2011, as Amended

Case Number: 19-02053

vs.

Respondents

J.P. Morgan Securities, LLC
Evan A. Schottenstein
Avi Elliot Schottenstein

Hearing Site: Boca Raton, Florida

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: Customers vs. Member and Associated Persons

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Beverley B. Schottenstein, Individually and as Co-Trustee under the Beverley B. Schottenstein Revocable Trust U/A/D April 5, 2011, as Amended: Scott C. Ilgenfritz, Esq. and Guy Burns, Esq., Johnson Pope Bokor Ruppel & Burns LLP, Tampa, Florida.

For Respondent J.P. Morgan Securities, LLC (“JPM”): Gabrielle L. Gould, Esq., Elizabeth Zito, Esq. and Melissa Brumer, Esq., Goodwin, Procter LLP, New York, New York.

For Respondents Evan A. Schottenstein (“EAS”) and Avi Elliot Schottenstein (“AES”): Carl S. Burkhalter, Esq., Peter S. Fruin, Esq., Jonathan J. Brennan, Esq. and Grace J. Posey, Esq., Maynard, Cooper, Gale, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: July 24, 2019.

Beverley B. Schottenstein, Individually and as Co-Trustee under the Beverley B. Schottenstein Revocable Trust U/A/D April 5, 2011, as Amended, signed the Submission Agreement: July 23, 2019.

Statement of Answer filed by Respondent JPM on or about: September 27, 2019.
J.P. Morgan Securities, LLC signed the Submission Agreement: September 23, 2019.

Statement of Answer filed by Respondent EAS on or about: September 27, 2019.
Respondent EAS signed the Submission Agreement: September 25, 2019.

Statement of Answer filed by Respondent AES on or about: September 27, 2019.
Respondent AES signed the Submission Agreement: September 25, 2019.

CASE SUMMARY

Claimants asserted the following causes of action: constructive fraud/abuse of fiduciary duty; fraudulent misrepresentations and omissions; and violation of Chapter 415, Fla. Statutes. The causes of action relate to the allegedly unauthorized purchase and/or sale of various securities in Claimants' account, including, but not limited to, multiple auto-callable structured notes and various other securities for which Respondent JPM was a market maker, including Apple stock, as well as initial public offerings (IPOs) and follow-on offerings (FPOs).

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

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

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: compensatory damages in excess of \$10,000,000.00; punitive damages in the amount of at least three times the compensatory damages awarded; interest; rescission of the investment in the Coatue Private Equity Fund ("Coatue") and the return of the capital calls paid to Coatue; disgorgement of all commissions and revenues received by Respondent JPM from all trading activity; costs of this arbitration proceeding, including attorneys' fees, filing fees, expert witness fees, arbitrators' fees, and any other costs; and such other relief deemed just and proper by the Panel.

In the Statement of Answer, Respondent JPM requested: dismissal of Claimants' Statement of Claim in its entirety; costs and expenses incurred in connection with this proceeding; and such other and further relief deemed just and proper by the Panel.

In the Statement of Answer, Respondent EAS requested: denial of Claimants' claims in their entirety; expungement of all references to this matter from his Central Registration Depository ("CRD") records; and such other and further relief deemed just and equitable by the Panel.

In the Statement of Answer, Respondent AES requested: denial of Claimants' claims in their entirety; expungement of all references to this matter from his CRD records; and such other and further relief deemed just and equitable by the Panel.

At the close of the hearing, Claimants modified their compensatory damage request to be in the amount of \$69,185,860.00.

At the close of the hearing, Respondent EAS withdrew his request for expungement.

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 July 23, 2020, Claimants filed a Motion for Final Hearings to be Conducted Virtually via Zoom Video Conference, to which all Respondents objected. The Panel heard oral argument from the parties and issued an Order dated August 18, 2020 that granted Claimants' Motion.

After the conclusion of Claimants' case-in-chief, Respondents JPM, EAS and AES moved to dismiss on the basis that Claimants failed to present evidence of a prima facie case. Claimants objected, asserting that the evidence established a prima facie case. The Panel denied the Motion.

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

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 JPM, EAS and AES are liable on the counts of constructive fraud/abuse of fiduciary duty and fraudulent misrepresentations and omissions.
2. Respondents JPM and EAS are further liable for elder abuse in violation of Chapter 415, Fla. Statutes.
3. Respondent JPM is liable for and shall pay to Claimants the sum of \$4,708,550.00 in compensatory damages, plus interest at the Florida legal rate that begins to accrue as of the date of service of this Award.
4. Respondent EAS is liable for and shall pay to Claimants the sum of \$9,000,000.00 in compensatory damages, plus interest at the Florida legal rate that begins to accrue as of the date of service of this Award.
5. Respondent AES is liable for and shall pay to Claimants the sum of \$602,251.00 in compensatory damages, plus interest at the Florida legal rate that begins to accrue as of the date of service of this Award.
6. Claimants' request for rescission of the Coatue investment is granted. As such, in addition to the amount awarded in Paragraph 3 above, Respondent JPM shall rescind the Coatue investment and pay Claimant \$4,291,450.00, plus interest at the Florida legal rate that

begins to accrue as of the date of service of this Award.

7. Pursuant to Section 415.1111, Fla. Stat., Respondent JPM is liable for and shall pay to Claimants costs in the amount of \$172,630.50.
8. Pursuant to Section 415.1111, Fla. Stat., Respondent EAS is liable for and shall pay to Claimants cost in the amount of \$172,630.50.
9. Pursuant to Section 415.1111, Fla. Stat., Respondent JPM is liable for and shall pay to Claimants one-half of their attorneys' fees, in an amount to be determined by a court of competent jurisdiction.
10. Pursuant to Section 415.1111, Fla. Stat., Respondent EAS is liable for and shall pay to Claimants one-half of their attorneys' fees, in an amount to be determined by a court of competent jurisdiction.
11. Respondent AES's (CRD Number 5708665) request for expungement of his CRD records is denied.
12. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee =\$ 2,250.00

**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 JPM is assessed the following:

Member Surcharge =\$ 4,025.00

Member Process Fee =\$ 7,000.00

Discovery-Related Motion Fees

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

Two (2) decisions on discovery-related motions on the papers =\$ 400.00
with one (1) arbitrator @ \$200.00/decision

One (1) decision on a discovery-related motion on the papers =\$ 600.00
with three (3) arbitrators @ \$200.00/decision/arbitrator

Claimant submitted one (1) discovery-related motion
Respondent JPM submitted one (1) discovery-related motion
A Non-Party submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 1,000.00

The Panel has assessed \$500.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$500.00 of the discovery-related motion fees jointly and severally to Respondents JPM, EAS and AES.

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

Ten (10) decisions on contested motions for the issuance of a subpoena with one Arbitrator @ \$200.00/decision = \$ 2,000.00

Total Contested Motion for Issuance of Subpoena Fees = \$ 2,000.00

The Panel has assessed \$1,000.00 of the contested motion for issuance of subpoena fees jointly and severally to Claimants.

The Panel has assessed \$1,000.00 of the contested motion for issuance of subpoena fees jointly and severally to Respondents JPM, EAS and AES.

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:

Two (2) pre-hearing sessions with the Panel @ \$1,500.00/session = \$ 3,000.00
Pre-hearing Conferences: November 11, 2019 1 session
August 18, 2020 1 session

Forty-Three (43) hearing sessions @ \$1,500.00/session = \$ 64,500.00
Hearing Dates: October 19, 2020 2 sessions
October 20, 2020 2 sessions
October 21, 2020 2 sessions
October 22, 2020 2 sessions
October 23, 2020 2 sessions
October 26, 2020 2 sessions
October 27, 2020 2 sessions
October 28, 2020 2 sessions
October 29, 2020 2 sessions
October 30, 2020 2 sessions
November 2, 2020 2 sessions
November 3, 2020 2 sessions
November 4, 2020 2 sessions

November 5, 2020	2 sessions
November 6, 2020	2 sessions
December 14, 2020	1 session
December 15, 2020	2 sessions
December 16, 2020	2 sessions
December 17, 2020	2 sessions
January 25, 2021	2 sessions
January 26, 2021	2 sessions
January 28, 2021	2 sessions

Total Hearing Session Fees =\$ 67,500.00

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,500.00 of the hearing session fees jointly and severally to Respondents JPM, EAS and AES.

The Panel has assessed \$64,500.00 of the hearing session fees jointly and severally to Respondents JPM and EAS.

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

ARBITRATION PANEL

Donna Greenspan Solomon	-	Public Arbitrator, Presiding Chairperson
James M. Scutti	-	Public Arbitrator
David Rich	-	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

Donna Greenspan Solomon

Donna Greenspan Solomon
Public Arbitrator, Presiding Chairperson

02/04/2021

Signature Date

James M. Scutti

James M. Scutti
Public Arbitrator

02/04/2021

Signature Date

David Rich

David Rich
Public Arbitrator

02/04/2021

Signature Date

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February 05, 2021

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