UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DONNA WAGNER Plaintiff/Petitioner/Arbitration Petitioner, v. BROKERS INTERNATIONAL FINANCIAL SERVICES, LLC, and MARK CHRISTOPHER PERRY, Defendants/Respondents/Arbitration Respondents.	Case No. 1:21-cv-1787-JPH-MG

MOTION TO VACATE ARBITRATION AWARD

Pursuant to 9 U.S.C. § 10, Defendants Brokers International Financial Services, LLC ("Brokers International"), and Mark Christopher Perry ("Perry," and with Brokers International "Defendants") move to vacate the arbitration award (the "Award") entered in favor of Plaintiff Donna Wagner ("Plaintiff") on May 17, 2021, by the Financial Industry Regulatory Authority ("FINRA") in FINRA Dispute Resolution Case no. 19-03556, on the following grounds:

1. *There was no agreement to arbitrate* because Plaintiff candidly admits she was ***never*** a "customer" of Defendants as that phrase is used and defined by FINRA and relevant legal authorities. Plaintiff ***never*** opened an account with Brokers International and ***never*** purchased a security (or any good or service) from Brokers International or from Perry. Plaintiff plainly concedes she purchased fixed insurance products (which are ***not*** regulated by FINRA and ***not*** sold or brokered by Brokers International or Perry) from non-parties Brian Simms ("Simms") and Brendanwood Financial Brokerage and Brendanwood Financial Services (collectively "Brendanwood"), who were found liable for defrauding her (and were accused of

defrauding scores of others; see, e.g., https://www.wrtv.com/news/call-6-investigators/second-lawsuit-filed-against-carmel-financial-adviser-for-losing-or-misappropriating-money).

2. The Award is barred by principles of *res judicata* and/or collateral estoppel (and FINRA Rule 12209) because before FINRA issued the Award Plaintiff obtained judgment in court against Simms and Brendanwood—who sold her the fixed insurance products at issue.

3. Defendants had nothing whatsoever to do with Plaintiff's purchase of fixed insurance products, which are ***not*** regulated by FINRA and which were sold to her by unrelated third parties (Simms and Brendanwood) who were ***never*** employed by or affiliated with Defendants and who did ***not*** possess any securities licenses at the time of the transactions, and over whom Defendants had neither the duty nor the ability to supervise.

Any one of the foregoing grounds, by itself, would fully justify (indeed require) vacating the Award. That all three grounds are present simply multiplies the error exponentially. The Award must be vacated under the Federal Arbitration Act ("FAA") and/or the Indiana Uniform Arbitration Act ("IAA") because the arbitrators exceeded their authority, and displayed manifest disregard of the law and complete irrationality.

Defendants did ***not*** waive their right to challenge the Award by participating in the arbitration. "If a party willingly and without reservation allows an issue to be submitted to arbitration, he cannot await the outcome and then later argue that the arbitrator lacked authority to decide the matter. If, however, a party clearly and explicitly reserves the right to object to arbitrability, his participation in the arbitration does not preclude him from challenging the arbitrator's authority in court." *AGCO Corp. v. Anglin*, 216 F.3d 589, 593 (7th Cir. 2000). Defendants participated in the arbitration *only after repeatedly objecting* to FINRA's jurisdiction to arbitrate the dispute. In the FINRA proceedings Defendants filed not one but ***two*** motions to

dismiss (the second of which was later renewed), and Defendants made it clear from the outset and throughout the pendency of the FINRA case that they disputed FINRA had authority to arbitrate the dispute. Notably, *Defendants never signed FINRA's Uniform Submission Agreement*.

Under the FAA a request to vacate an arbitration award may be filed by way of "motion" made within "three months" after the award was issued. 9 U.S.C. § 12. Such a request shall be made and heard in the manner provided by law for making and hearing motions. 9 U.S.C. § 6. "Under the Federal Arbitration Act, 9 U.S.C. § 6, proceedings to confirm or vacate an arbitration award must be initiated by motion and are governed by the general rules of motions practice." *Chelmowski v. AT&T Mobility, LLC*, 615 F. App'x 380, 381 (7th Cir. 2015) [citing Fed. R. Civ. P. 81(a)(6)(B) and holding no pleadings are required or permitted].

This Motion is supported by a Memorandum in Support which has been filed contemporaneously herewith.

Respectfully submitted,

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: June 16, 2021

By: */s/Scott B. Cockrum*

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