

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Sandra L. Liebhaber

Case Number: 13-01522

vs.

Respondent
Royal Alliance Associates, Inc.

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Sandra L. Liebhaber, hereinafter referred to as "Claimant": Robert S. Banks, Jr., Esq., Banks Law Office, PC, Portland, Oregon.

For Respondent Royal Alliance Associates, Inc., hereinafter referred to as "Respondent": Kasumi L. Takahashi, Esq., Jones, Bell, Abbott, Fleming & Fitzgerald, L.L.P., Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: May 23, 2013.

Claimant signed the Submission Agreement: May 23, 2013.

Statement of Answer filed by Respondent on or about: August 20, 2013.

Respondent signed the Submission Agreement: August 28, 2013.

CASE SUMMARY

Claimant asserted the following causes of action: negligence; breach of fiduciary duty; and California Securities Law Violations. The causes of action relate to Claimant's investments in Ohio National Life Insurance Variable Annuity, Hartford Director M Outlook Variable Annuity, Hartford Leaders Outlook Variable Annuity, SunAmerica Annuity and Life Assurance Variable Annuity and Inland American Real Estate Trust, Inc.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Recovery of the amounts Claimant paid for her investments, less any distributions she may have received up to the time of the award, plus statutory and pre-judgment interest, and for investments no longer held by Claimant, recovery of damages plus interest, all in an amount to be proved at the hearing but not less than \$325,000.00;
2. Claimant's costs in bringing this case, including filing fees, expert witness fees, and hearing fees; and
3. Such other relief as the Panel may deem appropriate at the conclusion of the hearing.

In the Statement of Answer, Respondent requested:

1. Denial of Claimant's claims;
2. An award be entered in favor of Respondent;
3. Claimant be required to pay all costs and non-attorney fees incurred in these proceedings;
4. A recommendation that all references to this matter be expunged from Kathleen Tarr and Richard McCollam's Central Registration Depository ("CRD") records; and
5. Such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

On May 14, 2014, Claimant's counsel advised FINRA Dispute Resolution that the case settled. On May 15, 2014, Respondent requested FINRA Dispute Resolution keep the case open as it will be seeking expungement.

On June 9, 2014, Respondent submitted a Request for Expungement on behalf of non-party Kathleen Tarr. On June 30, 2014, Claimant's counsel advised that he will not be filing a pre-hearing brief regarding Respondent's Request for Expungement, but planned to call Claimant and non-party Kathleen Tarr as witnesses at the expungement hearing.

On July 10, 2014, the Panel issued an Order requesting a copy of non-party Kathleen Tarr's BrokerCheck report and CRD for purposes of the expungement hearing.

On July 15, 2014, in response to the Panel's request, Claimant submitted a letter with a copy of non-party Kathleen Tarr's Form U5. On July 18, 2014, in response to the Panel's request, Respondent submitted a letter with copies of non-party Kathleen Tarr's BrokerCheck and CRD reports.

The Panel conducted a recorded telephonic hearing on August 12, 2014 regarding the appropriateness of expungement of customer dispute information from the CRD system as requested by non-party Kathleen Tarr. The request for expungement was opposed by Claimant. After oral statements and arguments by non-party Kathleen Tarr, Respondent, and Claimant, the Panel held its deliberations immediately after the hearing.

The Panel reviewed and relied upon the following documents:

- a. Claimant's Statement of Claim and Respondent's Statement of Answer;
- b. The expungement hearing brief filed by Respondent;
- c. The expungement hearing documents submitted by Claimant;
- d. Non-party Kathleen Tarr's BrokerCheck report as of the date of the hearing;
- e. Non-party Kathleen Tarr's CRD records (Form U5) as of August 6, 2012, submitted by Claimant who received the Web CRD from the Respondent during discovery; and
- f. The parties' settlement agreement.

The Panel noted that the agreement to settle Claimant's customer dispute was not conditioned on compensation paid to or an agreement made by Claimant to consent to or not to oppose a request for expungement of the customer dispute information from the CRD system. The Panel also noted that Ms. Tarr did not contribute to the settlement amount.

The Panel has 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, statements, oral arguments and evidence presented at the August 12, 2014 expungement hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel noted that Respondent's Statement of Answer includes a request for expungement on behalf of Richard McCollam. Respondent did not reiterate the request for expungement on behalf of Richard McCollam. As such, the Panel made no determination with respect to the request for expungement on behalf of Richard McCollam.
2. The Panel recommends the expungement of all references to the above-captioned arbitration from non-party Kathleen Tarr's (CRD #4215307) registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, non-party Kathleen Tarr 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 (the "Code"), the

Panel has made the following Rule 2080 affirmative findings of fact:
The claim, allegation, or information is factually impossible or clearly erroneous;
and

The claim, allegation, or information is false.

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

- a. Claimant requested compensatory damages in the sum of \$325,000.00, and Claimant agreed to accept \$30,000.00 in settlement of her claim. The argument of Respondent was that the decision to offer Claimant \$30,000.00 to settle her claim reflected a business decision regarding the continuing costs of defending the case through a full-panel evidentiary hearing. Claimant argued that the \$30,000.00 settlement reflected Claimant's net out of pocket losses ("NOP").

Paragraph 4 of the Settlement Agreement states in pertinent part: "The Parties are entering into this Agreement solely for the purpose of avoiding the burdens, inconvenience, and expenses of further litigation. This Agreement does not constitute, and shall not be construed as ... an admission ... of any wrongdoing, liability, or culpability."

There was no information presented which disputed this portion of the Settlement Agreement. Therefore, as required under Rule 12805(b), the Panel has found that with respect to the amount of payment made pursuant to the Settlement Agreement, the argument of Respondent is more persuasive and is factually correct.

- b. The Settlement Agreement was not conditioned upon an agreement by Claimant not to oppose a request for expungement by non-party Kathleen Tarr of Claimant's customer dispute from the CRD system. There was no information presented regarding the settlement negotiations.

Accordingly, the Panel finds that neither non-party Kathleen Tarr nor Respondent conditioned or sought to condition the settlement on an agreement not to oppose non-party Kathleen Tarr's expungement request.

Further, the Panel finds that the compensation paid to Claimant was not for the purpose of not opposing non-party Kathleen Tarr's request for expungement.

Finally, Claimant did, in fact, oppose expungement, was present during the telephonic hearing, provided the Panel with opposing documents and gave a full argument to the Panel requesting that expungement relief not be awarded.

- c. In late 2007, Claimant opened an Individual Retirement Account with Respondent with an initial deposit of \$315,000.00. Claimant was approximately 47 years of age. Non-party Kathleen Tarr was her broker of record. Stating that her investment objectives were long-term growth and income, with a moderate

investment risk, Claimant purchased four separate variable annuities and a real estate investment trust (“REIT”) paying over 6% per annum. Almost 15% of her investable monies remained in cash.

Claimant stated in her Statement of Claim that these investments were not suitable for her. The statement of non-party Kathleen Tarr was that the annuities were invested in a broad-based portfolio which matched Claimant’s investment objectives and risk tolerance. This information was not disputed by Claimant.

Claimant did not add any additional monies to her IRA. Claimant regularly received or took distributions from her IRA. Claimant sold one variable annuity in December 2011.

At the time of the expungement hearing, non-party Kathleen Tarr stated that it was her understanding and belief that Claimant still owns the same three variable annuities as well as the REIT. This information was not disputed by Claimant.

No other evidence or information regarding suitability was offered by Claimant.

- d. Respondent argued that any losses incurred by Claimant were “paper” losses due to the economic downturn of 2008 – 2009. By continuing to hold her assets, Respondent argued that Claimant no longer has incurred losses, and, to the contrary, has benefited from the upturn in the economy. This argument was not disputed by Claimant.
- e. The Panel finds that the statements offered by non-party Kathleen Tarr during the telephonic hearing were credible. The Panel finds that the investments were suitable for Claimant, and that the claim or allegation of unsuitability is clearly erroneous.
- f. The Panel finds that based upon the documents described above, the statements and other information presented at the telephonic hearing, and the Settlement Agreement, Claimant’s argument that the \$30,000.00 payment reflected NOP losses is not true. In addition, there is no documentation or other evidence to support a claim that Claimant suffered losses as a result of non-party Kathleen Tarr’s actions, or Respondent’s actions or inactions.

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 = \$ 1,425.00

**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, Royal Alliance Associates, Inc. is assessed the following:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

April 7-9, 2014, adjournment by parties	= \$ 1,125.00
May 5-7, 2014, adjournment by parties	= \$ 1,125.00

Total Adjournment Fees	= \$ 2,250.00
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The Panel has assessed \$2,250.00 of the adjournment fees to Respondent.

Discovery-Related Motion Fees

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

Five (5) Decisions on discovery-related motions on the papers with (1) <u>one</u> arbitrator @ \$200.00	= \$ 1,000.00
Claimant submitted <u>one</u> discovery-related motion	
Respondent submitted <u>four</u> discovery-related motions	

Total Discovery-Related Motion Fees	= \$ 1,000.00
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The Panel has assessed \$1,000.00 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 @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: October 21, 2013 1 session	

One (1) Hearing session on expungement request @ \$1,125.00/session	
Hearing Date: August 12, 2014 1 session	= \$1,125.00
Total Hearing Session Fees	= \$2,250.00

The Panel has assessed \$2,250.00 of the hearing session fees to Respondent.

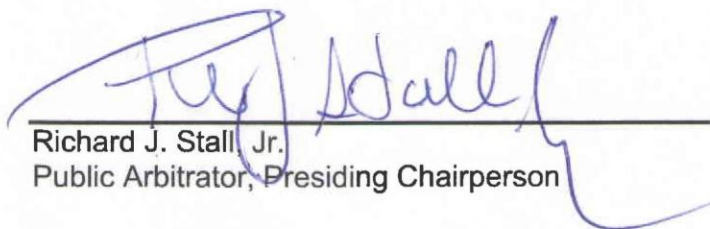
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Richard J. Stall, Jr.	-	Public Arbitrator, Presiding Chairperson
June McLaughlin	-	Public Arbitrator
Carole Helfert Aragon	-	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



Richard J. Stall, Jr.
Public Arbitrator, Presiding Chairperson

Sept. 5, 2014
Signature Date

June McLaughlin
Public Arbitrator

Signature Date

Carole Helfert Aragon
Public Arbitrator

Signature Date

September 10, 2014
Date of Service (For FINRA Dispute Resolution office use only)

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