

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant
Richard D. Marconi Trust

Case Number: 16-02110

vs.

Respondents
Next Financial Group, Inc.
Royal Alliance Associates, Inc.
Todd Allen Rustman

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer vs. Members and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Richard D. Marconi Trust ("Claimant"): Steve A. Buchwalter, Esq., Law Offices of Steve A. Buchwalter, P.C., Encino, California.

For Respondent Next Financial Group, Inc. ("Next Financial"): Chad E. Weaver, Esq., Freeman Mathis & Gary, LLP, Hermosa Beach, California.

For Respondent Royal Alliance Associates, Inc. ("Royal Alliance"): Thomas Fleming, Esq., Jones Bell LLP, Los Angeles, California.

For Respondent Todd Allen Rustman ("Rustman"): Jason Luhan, Esq., Newport Beach, California.

*FINRA recorded the appearance of Claimant's counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimant may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant's counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: July 13, 2016.

Amended Statement of Claim filed on or about: October 18, 2016.

Second Amended Statement of Claim filed on or about: April 27, 2017.

Claimant signed the Submission Agreement: July 1, 2016.

Statement of Answer filed by Next Financial on or about: November 7, 2016.
Statement of Answer to the Second Amended Statement of Claim filed by Next Financial on or about: May 17, 2017.
Next Financial signed the Submission Agreement: September 21, 2016.

Statement of Answer filed by Royal Alliance on or about: October 14, 2016.
Statement of Answer to the Amended Statement of Claim filed by Royal Alliance on or about: November 7, 2016.
Statement of Answer to the Second Amended Statement of Claim filed by Royal Alliance on or about: May 12, 2017.
Royal Alliance did not sign the Submission Agreement.

Statement of Answer filed by Rustman on or about: November 7, 2016.
Rustman signed the Submission Agreement: November 7, 2016.

CASE SUMMARY

Claimant asserted the following causes of action: fraud, misrepresentation, omission of material fact, violation of California Corporations Code Section 25401, negligence, negligent misrepresentation, unsuitability, failure to supervise, breach of contract, breach of fiduciary duty, and fraudulent failure to disclose trade data. The causes of action relate to various speculative, illiquid, high-commission investments, such as: Allianz Life Insurance Company, ATEL Growth Capital Fund V, ING Goldenselect, Florida Capital RE Partners 29 ("Florida Capital"), and Federal Home Loan Mortgage Corporation.

In the Amended Statement of Claim, Claimant asserted an additional cause of action for elder abuse pursuant to the: California Welfare and Institutions Code Sections 15600 and 15610.27; Elder Abuse Act; and Dependent Adult Civil Protection Act.

In the Second Amended Statement of Claim, Claimant asserted additional causes of action for forgery and embezzlement pursuant to California Penal Code Sections 470 and 503 respectively.

In the Statements of Answer, Next Financial denied the allegations made in the Statement of Claim and Second Amended Statement of Claim and asserted various affirmative defenses.

In the Statements of Answer, Royal Alliance denied the allegations made in the Statement of Claim, Amended Statement of Claim, and Second Amended Statement of Claim and asserted various affirmative defenses.

In the Statement of Answer, Rustman incorporated by reference all factual allegations set forth by Next Financial and Royal Alliance in their respective Statements of Answer.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Rescission of all trades, or in the alternative, compensatory damages in an amount to be proven at the hearing, believed to be \$900,000.00 and divided amongst Next Financial, Royal Alliance, and Rustman proportional to fault, as determined by the Panel;
2. Interest on the above amount as set by statute or in the discretion of the Panel;
3. Attorneys' fees and costs of this arbitration;
4. Statutory damages under California Corporations Code Sections 25501, 25503, 25504.1; and
5. Punitive damages in accordance with California Civil Code Section 3345, or in an amount to be determined by the Panel.

In the Amended Statement of Claim and Second Amended Statement of Claim, Claimant additionally requested:

1. Attorneys' fees and costs of this arbitration pursuant to contract, the Elder Abuse Act and Dependent Adult Civil Protection Act; and
2. Damages and recovery as set forth in the California Welfare and Institutions Code Section 15657.

In the Statements of Answer, Next Financial requested:

1. Dismissal of Claimant's claims against it, with prejudice;
2. All forum fees be assessed to Claimant;
3. Expungement of all reference to this arbitration from its registration records maintained by the Central Registration Depository ("CRD"); and
4. Such other and further relief as the Panel deems just and proper.

In the Statements of Answer, Royal Alliance requested:

1. Denial of Claimant's claims;
2. An award in favor of Royal Alliance; and
3. All forum fees and costs (not including attorneys' fees) incurred during this arbitration be assessed against Claimant.

In the Statement of Answer, Rustman did not set forth a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

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

Royal Alliance did not file with FINRA Office of Dispute Resolution ("ODR") a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the Statement of Claim, is bound by the determination of the Panel on all issues submitted.

On May 9, 2017, Next Financial filed a Motion to Dismiss pursuant to FINRA Rule 12206 of the Code. On June 2, 2017, Claimant filed an Opposition to the Motion to Dismiss. On June 7, 2017, Next Financial filed a Reply to Claimant's Opposition to the Motion to Dismiss. By Order, dated June 30, 2017, the Panel denied Next Financial's Motion to Dismiss without prejudice.

On May 16, 2017, Royal Alliance filed a Motion for Sanctions against Claimant. On May 23, 2017, Claimant filed an Opposition to the Motion for Sanctions. On May 26, 2017, Royal Alliance filed a Reply to Claimant's Opposition to the Motion for Sanctions. By Order, dated June 14, 2017, the Panel denied Royal Alliance's Motion for Sanctions without prejudice.

On November 10, 2017, Claimant advised FINRA ODR that all claims against Royal Alliance were dismissed with prejudice. On June 26, 2019, Claimant advised FINRA ODR that all claims against Next Financial were dismissed with prejudice.

On January 14, 2020, Rustman filed a Motion for Expungement.

On January 21, 2020, Claimant advised FINRA ODR that all remaining claims were dismissed with prejudice; and on the same day, filed correspondence advising that it did not oppose Rustman's expungement request.

The Panel conducted a recorded telephonic hearing on March 26, 2020 so the parties could present oral argument and evidence on Rustman's request for expungement. Claimant did not participate in the expungement hearing and, as stated in its correspondence, did not oppose the expungement request.

The Panel reviewed Rustman's BrokerCheck® Report.

The Panel noted that this case was not settled. Accordingly, there were no settlement documents to review.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Rustman's Motion for Expungement; Rustman's counsel's arguments at the expungement hearing; Claimant's dismissal of the claims with prejudice; and the fact that Claimant did not oppose the expungement request.

The parties present at the hearing 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, testimony, 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. The Panel recommends the expungement of all references to the above-captioned arbitration, Occurrence Number 1894048, from registration records maintained by the CRD, for Respondent Todd Allen Rustman (CRD# 2453708), with the understanding that, pursuant to Notice to Members 04-16, Respondent Todd Allen Rustman 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, the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

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

Claimant's remaining claim against Rustman concerned the Florida Capital investment. Claimant initially asserted that the properties related to this investment had no value. However, at the end of 2019, Florida Capital found a purchaser for certain of its assets and advised Claimant that, upon closing, the proceeds would be distributed to investors. Rustman's counsel explained that Claimant continues to be invested in the properties and that the sale of Florida Capital's assets provided Claimant with demonstrable financial gain. Claimant dismissed all remaining claims against Rustman with prejudice and did not oppose his expungement request. Therefore, the claim that the property had no value is factually impossible or clearly erroneous and false.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, 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, Next Financial is assessed the following:

Member Surcharge	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

Accordingly, as a party, Royal Alliance 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:

August 7-11, 2017, postponement Claimant	= WAIVED
September 18-22, 2017, postponement by the parties	=\$1,300.00
April 9-13, 2018 and May 1-4, 2018, postponement by Rustman	=\$1,300.00
October 24-26, 2018, postponement by Rustman	=\$1,300.00
January 9-11, 2019, postponement by the parties	=\$1,300.00
May 7-9, 2019, postponement by the parties	=\$1,300.00

Total Postponement Fees	= \$6,500.00
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The Panel has assessed \$2,600.00 of the postponement fees to Claimant.

The Panel has assessed \$650.00 of the postponement fees jointly and severally to Royal Alliance and Next Financial.

The Panel has assessed \$3,250.00 of the postponement fees to Rustman.

Last Minute Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within ten calendar days before the start of a scheduled hearing session:

October 24-26, 2018, postponement requested by Rustman	= \$1,800.00
January 9-11, 2019, postponement requested by the parties	= \$1,800.00

Total Last Minute Cancellation Fees	= \$3,600.00
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The Panel has assessed \$1,800.00 of the last minute cancellation fees to Claimant.

The Panel has assessed \$1,800.00 of the last minute cancellation fees to Rustman.

Discovery-Related Motion Fee

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

Four (4) decisions on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision	= \$800.00
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Claimant submitted one (1) discovery-related motion

Royal Alliance submitted two (2) discovery-related motions

Next Financial submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$800.00
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The Panel has assessed \$400.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$300.00 of the discovery-related motion fees jointly and severally to Royal Alliance and Next Financial.
The Panel has assessed \$100.00 of the discovery-related motion fees to Royal Alliance.

Contested Motion for Issuance of Subpoena Fee

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

One (1) decision on a contested motion for the issuance of a subpoena
with one arbitrator @ \$250.00 = \$250.00

Total Contested Motion for Issuance of Subpoena Fee = \$250.00

The Panel has assessed \$250.00 of the contested motion for issuance of subpoenas fees to Royal Alliance.

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:

Two (2) pre-hearing sessions with a single arbitrator @ \$450.00/session = \$900.00

Pre-hearing conference: August 9, 2017 1 session
September 19, 2017 1 session

Fifteen (15) pre-hearing sessions with the Panel @ \$1,300.00/session = \$19,500.00

Pre-hearing conference: December 6, 2016 1 session
March 10, 2017 1 session
April 26, 2017 1 session
June 13, 2017 1 session
June 29, 2017 1 session
September 5, 2017 1 session
April 10, 2018 1 session
April 12, 2018 1 session
October 26, 2018 1 session
October 31, 2018 1 session
January 10, 2019 1 session
May 7, 2019 1 session
June 20, 2019 1 session
August 15, 2019 1 session
October 8, 2019 1 session

Four (4) hearing sessions with the Panel @ \$1,300.00/session = \$5,200.00

Hearing Dates: October 22, 2018 2 sessions
October 23, 2018 2 sessions

One (1) hearing session on expungement request @ \$1,300.00/session = \$1,300.00

Hearing Date: March 26, 2020 1 session

Total Hearing Session Fees =\$26,900.00

The Panel has assessed \$11,075.00 of the hearing session fees to Claimant.
The Panel has assessed \$ 2,175.00 of the hearing session fees to Next Financial.
The Panel has assessed \$ 2,600.00 of the hearing session fees jointly and severally to Royal Alliance and Next Financial.
The Panel has assessed \$ 8,450.00 of the hearing session fees to Rustman.
The Panel has waived \$2,600.00 of the hearing session fees for the April 10, 2018 and October 26, 2018 pre-hearing conference calls.

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

ARBITRATION PANEL

Ronald L. Cameron	-	Public Arbitrator, Presiding Chairperson
Barry A. Fisher	-	Public Arbitrator
David K. Slay	-	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

Ronald L. Cameron

Ronald L. Cameron
Public Arbitrator, Presiding Chairperson

04/17/2020

Signature Date

Barry A. Fisher

Barry A. Fisher
Public Arbitrator

04/17/2020

Signature Date

David K. Slay

David K. Slay
Public Arbitrator

04/15/2020

Signature Date

April 22, 2020

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