

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
William Bernard as Trustee of the  
Bernard Revocable Living Trust

Case Number: 15-02744

vs.

Respondents  
Avenir Financial Group,  
Michael Clements,  
David Arthur Allen,  
Cesar Rodriguez, and  
Vladimir Belyaev

Hearing Site: Minneapolis, Minnesota

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Nature of the Dispute: Customer vs. Member and Associated Persons

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimant William Bernard as Trustee of the Bernard Revocable Living Trust (“Claimant”): Mark J. Briol, Esq., William G. Carpenter, Esq., and Mary Cate Cicero, Esq., Briol & Associates PLLC, Minneapolis, Minnesota. Ms. Cicero appeared on or about May 31, 2016. Prior to Ms. Cicero’s appearance, Claimant appeared pro se.

For Respondent Avenir Financial Group (“Avenir”): Michael Clements, CCO, Avenir Financial Group, Wellington, Florida.

Respondent Michael Clements (“Clements”) appeared pro se.

Respondent David Arthur Allen (“Alen”) appeared pro se.

Respondent Cesar Rodriguez (“Rodriguez”) appeared pro se.

Respondent Vladimir Belyaev (“Belyaev”) did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: October 8, 2015.

Claimant signed the Submission Agreement: October 7, 2015.

Claimant submitted a Reply to Rodriguez’s Statement of Answer: March 8, 2016.

Statement of Answer filed jointly by Avenir and Clements on or about: March 22, 2016.

Avenir signed the Submission Agreement: June 14, 2016.

Clements signed the Submission Agreement: June 14, 2016.

Statement of Answer filed by Allen on or about: March 21, 2016.

Allen signed the Submission Agreement: March 21, 2016.

Statement of Answer filed by Rodriguez on or about: February 25, 2016.

Cesar Rodriguez did not sign the Submission Agreement.

Belyaev did not file a Statement of Answer.

Belyaev did not sign the Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized trading, breach of fiduciary duty, churning, manipulation, misrepresentation, suitability, failure to supervise, negligence, indemnification, theft, recovery of commissions, swindle, and forgery. The causes of action related to Claimant's allegations that Respondents purchased shares in his account and traded on margin without his permission. Claimant further alleged that Respondents falsified account documents to allow for trading other than the single purchase of Fibrocell Science stock, which he had authorized.

Unless specifically admitted in the Statement of Answer, Avenir and Clements denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

Unless specifically admitted in the Statement of Answer, Rodriguez presented his statement of events.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: \$283,253.50 in compensatory damages, \$200,000.00 in punitive damages, interest, and \$2,200.00 in costs.

At the close of the hearing, Claimant requested compensatory damages in the amount of \$148,876.71, a penalty in the amount of \$148,876.71, punitive damages in the amount of \$744,383.55, pre-award interest in the amount of \$28,449.14, attorneys' fees in the amount of \$117,920.44, and forum fees in the amount of \$1,425.00.

In the Statement of Answer, Avenir and Clements requested dismissal of Claimant's Statement of Claim, attorneys' fees, costs, and all other appropriate relief. Clements also requested that all references to this matter be expunged from his registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer, Allen requested that Claimant's claims against him be denied and dismissed with prejudice, that he be awarded costs and expenses, and that all references to this matter be expunged from his registration records maintained by the CRD.

In the Statement of Answer, Rodriguez did not request relief.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

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

The Panel determined that Belyaev is currently in the military service, and pursuant to FINRA IM-1000-2 is on inactive status. The Panel further determined that Claimant’s claims against Belyaev are stayed.

The Panel determined that the Answer submitted by Clements was a joint Answer on behalf of Clements and Avenir. The Panel further determined that Clements appeared at the hearing in an individual capacity and in a corporate capacity on behalf of Avenir.

Claimant filed a Motion for Default against Respondents Avenir and Belyaev on or about October 18, 2016. Claimant withdrew its Motion for Default on or about October 27, 2016.

Claimant filed a Request to File Prehearing Brief on or about December 28, 2016. Allen filed a Response to Claimant’s Request to File Prehearing Brief on or about December 30, 2016. In its Order dated January 9, 2017, the Panel denied Claimant’s Request to File Prehearing Brief.

Claimant filed a Request for an Explained Decision Pursuant to Rule 12904(g) on or about December 30, 2016.

Allen filed a Request to File a Motion to Dismiss (“Allen’s Request”) on or about January 4, 2017. Clements filed a Response to Allen’s Request on or about January 5, 2017. Claimant filed an Opposition to Allen’s Request on or about January 6, 2017. Clements filed a Reply to Claimant’s Opposition to Allen’s Request and (his own) Motion to Sanction Claimant and Allen on or about January 11, 2017.

Claimant filed a Motion for Sanctions and Memorandum in Support on or about January 5, 2017.

In its decision dated January 9, 2017, the Panel decided that Claimant’s Motion for Sanctions, Allen’s Motion to Dismiss, and Claimant’s Request for an Explained Decision should be presented to the Panel at the commencement of the hearing scheduled to begin on January 18, 2107.

Rodriguez filed a Request to Appear by Telephone on or about January 9, 2017. Claimant filed an opposition to Rodriguez's Request to Appear by Telephone on or about January 9, 2017.

In its decision dated January 13, 2017, the Panel denied Rodriguez's Request to Appear by Telephone. The Panel further determined that Clements' Responsive pleading related to Allen's Motion to Dismiss, including Motion for Sanctions, should be presented to the Panel at the commencement of the hearing scheduled to begin on January 18, 2017.

Rodriguez did not appear at the evidentiary hearing. Upon review of the file and the representations made on behalf of Claimant, the Panel determined that Respondent Rodriguez has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Rodriguez's presence, in accordance with the Code.

Allen withdrew his Motion to Dismiss on the record at the hearing.

The Panel denies Claimant's Request for an explained decision herein.

The Panel grants Claimant's Motion for Sanctions herein.

The Panel denied Clements' Motion for Sanctions against Claimant and Allen on the record at the hearing.

Allen moved for sanctions against Clements on the record at the hearing. The Panel denied Allen's Motion for Sanctions on the record at the hearing.

At the conclusion of the evidentiary hearing, the Panel requested that the parties provide written closing arguments to the Panel by January 25, 2017. Claimant submitted a Post-Hearing Brief on or about January 25, 2017. Allen submitted a Closing Statement and an audio file on or about January 25, 2017.

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, the testimony, the 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. Respondents Avenir Financial Group, Michael Clements, and Cesar Rodriguez, are jointly and severally liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$133,989.04 in compensatory damages.

2. Respondent David Arthur Allen is liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$14,887.67 in compensatory damages.
3. Respondents Avenir Financial Group, Michael Clements, and Cesar Rodriguez, are jointly and severally liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$22,500.00 in punitive damages pursuant to Minn. Stat. 549.20.
4. Respondent David Arthur Allen is liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$2,500.00 in punitive damages pursuant to Minn. Stat. 549.20.
5. Respondents Avenir Financial Group, Michael Clements, and Cesar Rodriguez, are jointly and severally liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$270.00 in costs as reimbursement of the non-refundable portion of Claimant's filing fee.
6. Respondent David Arthur Allen is liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$30.00 in costs as reimbursement of the non-refundable portion of Claimant's filing fee.
7. Respondents Avenir Financial Group, Michael Clements, and Cesar Rodriguez, are jointly and severally liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$59,400.00 in attorneys' fees pursuant to Minn. Stat. 80A.76(b)(1).
8. Respondent David Arthur Allen is liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$6,600.00 in attorneys' fees pursuant to Minn. Stat. 80A.76(b)(1).
9. Respondent Michael Clements liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust the sum of \$10,000.00 in sanctions for discovery violations.
10. Respondent Michael Clements is liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust interest on the sum stated above in Paragraph 9 of this Award at the rate of 5% per annum from the date of service of this Award through and including the date this Award is paid in full.
11. Respondents Avenir Financial Group, Michael Clements, and Cesar Rodriguez, are jointly and severally liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust interest on the sums stated above in Paragraphs 1, 3, and 7 of this Award at the rate of 5% per annum from the date of service of this Award through and including the date this Award is paid in full.

12. Respondent David Arthur Allen is liable for and shall pay to Claimant William Bernard as Trustee of the Bernard Revocable Living Trust interest on the on the sums stated above in Paragraphs 2, 4, and 8 of this Award at the rate of 5% per annum from the date of service of this Award through and including the date this Award is paid in full.
13. Respondent Michael Clements' request for expungement of his CRD records is denied.
14. Respondent David Arthur Allen's request for expungement of his CRD records is denied.
15. Any and all claims for relief not specifically addressed herein, including penalties, 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 | =\$ 1,425.00 |
|--------------------------|--------------|

*\*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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as a party, Avenir Financial Group is assessed the following:

|                    |              |
|--------------------|--------------|
| Member Surcharge   | =\$ 1,900.00 |
| Member Process Fee | =\$ 3,750.00 |

#### **Discovery-Related Motion Fee**

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 |
| <u>Claimant submitted one (1) discovery-related motion</u>   |            |
| Total Discovery-Related Motion Fee                           | =\$ 200.00 |

The Panel has assessed \$180.00 of the discovery-related motion fee jointly and severally to Respondents Avenir Financial Group, Michael Clements, and Cesar Rodriguez.

The Panel has assessed \$20.00 of the discovery-related motion fee to Respondent David Arthur Allen.

**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 the Panel @ \$ 1,125.00/session | = \$ 2,250.00 |
| Pre-hearing conference: June 1, 2016                              | 1 session     |
| June 22, 2016   | 1 session     |
| Six (6) hearing sessions @ \$ 1,125.00/session                    | = \$ 6,750.00 |
| Hearing Dates: January 18, 2017                                   | 2 sessions    |
| January 19, 2017  | 2 sessions    |
| January 20, 2017  | 2 sessions    |
| <hr/>   |               |
| Total Hearing Session Fees  | = \$ 9,000.00 |

The Panel has assessed \$8,100.00 of the hearing session fees jointly and severally to Respondents Avenir Financial Group, Michael Clements, and Cesar Rodriguez.

The Panel has assessed \$900.00 of the hearing session fees to Respondent David Arthur Allen.

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

**ARBITRATION PANEL**

|                              |   |  |
|------------------------------|---|--|
| Lawrence R. Commers          | - | Public Arbitrator, Presiding Chairperson |
| Robert Meredith Altman-Segal | - | Public Arbitrator                        |
| Michael Allen Meixner        | - | Non-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**

/s/ Lawrence R. Commers  
Lawrence R. Commers  
Public Arbitrator, Presiding Chairperson

03/19/17  
Signature Date

/s/ Robert Meredith Altman-Segal  
Robert Meredith Altman-Segal  
Public Arbitrator

03/21/17  
Signature Date

/s/ Michael Allen Meixner  
Michael Allen Meixner  
Non-Public Arbitrator

03/20/17  
Signature Date

03/22/17  
Date of Service (For FINRA Office of Dispute Resolution office use only)



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\_\_\_\_\_  
Lawrence R. Commers  
Public Arbitrator, Presiding Chairperson

March 19, 2017  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Robert Meredith Altman-Segal  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Michael Allen Meixner  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

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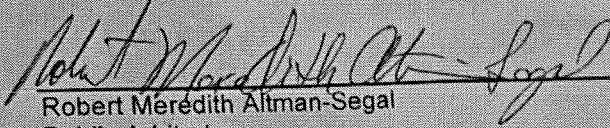
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Robert Meredith Altman-Segal  
Public Arbitrator

3-21-17  
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Signature Date

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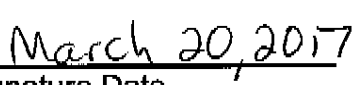
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