

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Michael W. Garrette, Sr.

Case Number: 22-00358

vs.

Respondent

First Allied Securities, Inc.

Hearing Site: Tampa, 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: Customer vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Michael W. Garrette, Sr.: Nicholas J. Guiliano, Esq., The Guiliano Law Group PC, Philadelphia, Pennsylvania.

For Respondent First Allied Securities, Inc.: Benjamin J. Biard, Esq. and Zachary S. Knoblock, Esq., Winget, Spadafora, Schwartzberg, LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed by Claimant on or about: February 16, 2022.

Claimant signed the Submission Agreement: February 16, 2022.

Statement of Answer filed by Respondent on or about: May 9, 2022.

Respondent signed the Submission Agreement: May 11, 2022.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: sale of unsuitable securities; violations of sections 10(b) and 20(a) of the Securities Exchange Act of 1934; violation of Section 12 of the Securities Act of 1933; breach of fiduciary duty; negligent failure to supervise; and common law fraud. The causes of action relate to the sale of alternative investments by Respondent's agent during the course of the agent's association with Respondent.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: compensatory damages of \$115,000.00; lost income under the "well managed portfolio" theory of recovery; punitive damages; interest at the legal rate; reasonable attorneys' fees and costs of suit; and any other relief that is just, fair, and equitable.

In the Statement of Answer, Respondent requested: dismissal of the Statement of Claim in its entirety; the costs and expenses of this arbitration, including forum fees and reasonable attorneys' fees; and other and further relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 29, 2022, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On December 27, 2022, Claimant filed a response opposing the Motion to Dismiss. On January 30, 2023, the Panel heard oral arguments on the Motion to Dismiss. Afterwards, FINRA staff informed the parties that the pre-hearing conference on the Motion to Dismiss was not recorded due to a technical error. On February 6, 2023, the parties filed their agreement to waive the recording requirement pursuant to Rule 12206(b)(4) of the Code. On February 7, 2023, the Panel granted the Motion to Dismiss, and provided the following explanation:

Claimant did not indicate any date of a cause of action after the purchase date, such as when Claimant discovered the fraud or wrongdoing. Claimant did not give any alternative dates, either in the pleadings or in argument during the pre-hearing conference on the Motion to Dismiss, which could have tolled the Rule 12206 deadline as the date of the "occurrence or event giving rise to the dispute, claim or controversy." Therefore, the purchase date stood as the date of the occurrence which is more than six (6) years prior to the filing of the Statement of Claim.

Respondent's Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his claims in court pursuant to Rule 12206(b) of the Code.

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. Claimant's claims are dismissed in their entirety pursuant to Rule 12206 of the Code.

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	=\$ 1,425.00
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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 that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge	=\$ 1,700.00
Member Process Fee	=\$ 3,250.00

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 @ \$1,125.00/session	=\$ 2,250.00
Pre-Hearing Conferences: June 7, 2022	1 session
January 30, 2023	1 session

Total Hearing Session Fees	=\$ 2,250.00
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The Panel has assessed \$1,687.50 of the hearing session fees to Claimant.

The Panel has assessed \$562.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Mimi B. Osiason	-	Public Arbitrator, Presiding Chairperson
Maurice M. Feller	-	Public Arbitrator
Kathy A. Tatone	-	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

Mimi B. Osiason

Mimi B. Osiason
Public Arbitrator, Presiding Chairperson

02/13/2023

Signature Date

Maurice M. Feller

Maurice M. Feller
Public Arbitrator

02/13/2023

Signature Date

Kathy A. Tatone

Kathy A. Tatone
Public Arbitrator

02/14/2023

Signature Date

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February 14, 2023

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