

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Frank K. Lee, IRA

Case Number: 19-01006

vs.

Respondent
First Kentucky Securities Corporation

Hearing Site: Louisville, Kentucky

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 a majority-public panel.

The evidentiary hearing was conducted by videoconference

REPRESENTATION OF PARTIES

For Claimant Frank K. Lee, IRA (“Claimant”): Bruce D. Oakes, Esq. and Richard B. Fosher, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

For Respondent First Kentucky Securities Corporation (“Respondent”): Richard S. Frankowski, Esq. and Robert E. Norton, Esq., The Frankowski Firm, LLC, Birmingham, Alabama and Mark Gray, Esq., Gray & White Law, Louisville, Kentucky.

CASE INFORMATION

Statement of Claim filed on or about: April 12, 2019.

Statement of Answer to Counterclaim filed on or about: January 29, 2020.

Claimant signed the Submission Agreement: April 5, 2019.

Statement of Answer filed on or about: June 4, 2019.

Amended Statement of Answer and Counterclaim filed on or about: November 27, 2019.

Respondent signed the Submission Agreement: June 6, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; violation of Kentucky’s Securities Act, KRS Chapter 292 *et al.*; breach of contract; negligence/negligent misrepresentation/omission; common law fraud; restitution; and negligent supervision. The causes of action related to Claimant’s allegation that Respondent’s agent

engaged in a highly speculative investment strategy and invested a large portion of Claimant's retirement funds in two energy stocks, Breitburn Energy and Linn Energy, which did not align with Claimant's risk tolerance.

Unless specifically admitted in the Amended Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted the following causes of action: fraud, bad faith, and violation of common law and FINRA equitable requirements. The causes of action related to Respondent's allegation that Claimant's Statement of Claim contains material misrepresentations.

Unless specifically admitted in the Statement of Answer to Counterclaim, Claimant denied the allegations made in the Counterclaim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested approximately \$700,000.00 in compensatory damages, punitive damages in the amount the Panel deems appropriate, rescission, reasonable attorneys' fees, interest, costs, filing and forum fees, and such other and further relief which the Panel deems just and proper under the circumstances.

In the Amended Statement of Answer and Counterclaim, Respondent requested that the Panel reject Claimant's Statement of Claim in its entirety and order Claimant to pay damages to Respondent in an amount to be proven at hearing; attorneys' fees; costs, including forum fees, hearing session fees, and costs in bringing the action; pre-judgment and post-judgment interest at the maximum statutory interest rate until the date of the award pursuant to applicable law; and punitive damages.

In the Answer to Counterclaim, Claimant requested that Respondent's Counterclaim be denied.

At the hearing, Claimant requested compensatory damages between \$299,399.25 and \$1,254,488.32, attorneys' fees in the amount of 1/3 of the gross recovery based on contingency fee agreement, forum fees, and costs in the amount of \$8,625.13.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 27, 2019, Respondent filed a Motion and Memorandum in Support of Filing an Amended Answer and Counterclaim ("Motion to Amend"). On December 9, 2019, Claimant filed a Response to the Motion to Amend. In an Order dated January 7, 2020, the Panel granted the Motion to Amend.

At the hearing, Respondent moved for a directed verdict on the claim that Respondent failed to supervise its employee. On the record, the Panel denied the motion for directed verdict.

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. Respondent is liable for and shall pay to Claimant the sum of \$450,000.00 in compensatory damages and pre-judgment interest.
2. Respondent is liable for and shall pay to Claimant the sum of \$150,000.00 in attorneys' fees pursuant to KRS 292.480(1) and both parties' requests for attorneys' fees pursuant to common law.
3. Respondent is liable for and shall pay to Claimant the sum of \$8,625.13 in costs.
4. Respondent is liable for and shall pay to Claimant the sum of \$425.00 to reimburse Claimant for the non-refundable portion of the filing fee previously paid to FINRA Dispute Resolution Services.
5. Respondent's Counterclaim is denied.
6. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	1,725.00
Counterclaim Filing Fee	= \$	1,700.00

**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, Respondent 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:

November 2-5, 2021, postponement requested jointly by the parties	= \$	1,300.00
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Total Postponement Fees = \$ 1,300.00

The Panel has assessed \$650.00 of the postponement fees to Claimant.

The Panel has assessed \$650.00 of the postponement 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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 3,900.00
Pre-Hearing Conferences: August 6, 2019 1 session
March 30, 2020 1 session
June 9, 2020 1 session

Eight (8) hearing sessions @ \$1,300.00/session = \$ 10,400.00
Hearings: June 28, 2022 2 sessions
June 29, 2022 2 sessions
June 30, 2022 2 sessions
July 1, 2022 2 sessions

Total Hearing Session Fees = \$ 14,300.00

The Panel has assessed \$1,950.00 of the hearing session fees to Claimant.

The Panel has assessed \$12,350.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Kim L. Kirn	-	Public Arbitrator, Presiding Chairperson
Stuart D. Summers	-	Public Arbitrator
Steven Michael McCauley	-	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

Kim L. Kirn

Kim L. Kirn
Public Arbitrator, Presiding Chairperson

07/15/2022

Signature Date

Stuart D. Summers

Stuart D. Summers
Public Arbitrator

07/15/2022

Signature Date

Steven Michael McCauley

Steven Michael McCauley
Non-Public Arbitrator

07/15/2022

Signature Date

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July 15, 2022

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