

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Allen B. Silk, IRA
Allen B. Silk, SEP
Mary E. Silk SEP
Mary E. Silk, IRA
Mary E. Silk
Allen B. Silk

Case Number: 11-04569

vs.

Respondents

Securities Service Network, Inc.
Gary Lee Spooner

Hearing Site: Jackson, Mississippi

Nature of the Dispute: Customers vs. Member and Associated Person

The case proceeded under the Majority Public Panel Rule/ Majority Public Panel

REPRESENTATION OF PARTIES

For Claimants Allen B. Silk, IRA, Allen B. Silk, SEP, Mary E. Silk SEP, Mary E. Silk, IRA, Mary E. Silk and Allen B. Silk: Frank "Kim" Breese, III, Esq., Breese Law Office, PLLC, Ridgeland, Mississippi.

For Respondent Securities Service Network, Inc. ("SSN"): Ryan R. Baker, Esq., Bass Berry & Sims PLC, Memphis, Tennessee.

Respondent Gary Lee Spooner did not appear.

CASE INFORMATION

Statement of Claim filed on or about: December 2, 2011.

Allen B. Silk, IRA signed the Submission Agreement: October 1, 2011.

Allen B. Silk, SEP signed the Submission Agreement: October 1, 2011.

Mary E. Silk SEP signed the Submission Agreement: October 1, 2011.

Mary E. Silk, IRA signed the Submission Agreement: October 1, 2011.

Allen B. Silk signed the Submission Agreement: October 1, 2011.

Mary E. Silk signed the Submission Agreement: October 1, 2011.

Statement of Answer and Cross-Claim filed by Respondent SSN on or about: February 6, 2012.

SSN signed the Submission Agreement: February 3, 2012.

Gary Lee Spooner did not file a Statement of Answer to the Statement of Claim or the Cross-Claim and did not file a signed Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: 1) suitability; 2) failure to supervise; 3) fraud; and 4) violations of FINRA Rules. The causes of action relate to, among other things, recommendation of the purchase and/or sale of various Prudential variable annuities, AVIVA annuities and the alleged purchase of a John Hancock Life Insurance Policy in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent SSN denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Cross-Claim, Respondent SSN asserted the cause of action of indemnification.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$250,000.00, reimbursement of surrender penalties, disgorgement of fees and commissions, exemplary damages, attorneys' fees, costs and interest.

At the close of the hearing, Claimants requested compensatory damages in the amount of \$199,732.00, attorneys' fees and expenses in the amount of \$95,839.54 and an unspecified amount of exemplary damages.

In its Statement of Answer, Respondent SSN requested that the Statement of Claim be denied, attorneys' fees and costs. In its Cross-Claim, Respondent SSN requested indemnification from Respondent Spooner.

OTHER ISSUES CONSIDERED AND DECIDED

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

Upon review of the file and the representations made by Claimants, the undersigned arbitrators (the "Panel") determined that Respondent Gary Lee Spooner 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 said Respondent present, in accordance with the Code of Arbitration Procedure (the "Code").

Respondent Gary Lee Spooner did not file with FINRA Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

The parties 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 and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' Claims against Securities Service Network, Inc. ("SSN")

1. Suitability (FINRA Rule 2310)
 - a. Purchase of four Prudential Annuities (2 Advanced Series XTra Credit Six and 2, APEX II): Claim withdrawn with prejudice at start of hearing;
 - b. Sale of the four Prudential Annuities: The Panel finds that the recommendation to sell these annuities violated FINRA Rule 2310; that Respondent Spooner was acting with actual authority from Respondent SSN to recommend this sale; and Respondent SSN is liable for the damages occasioned by this recommendation;
 - c. Recommendation to purchase Equity Indexed Annuities from AVIVA with the proceeds from the liquidation of the Prudential Annuities: The Panel finds that this recommendation was outside the scope of Respondent Spooner's actual or apparent authority with Respondent SSN and Respondent SSN is not liable for the damages, if any, occasioned by this recommendation; and
 - d. Recommendation to convert a whole life policy to a new John Hancock policy. Claim withdrawn with prejudice implicitly by the failure to offer any proof on this issue during the hearing.
2. Failure to Supervise: The Panel finds that Respondent SSN did not breach its obligations to supervise Respondent Spooner in the conduct of his securities business for Respondent SSN.
3. Fraud (FINRA Rule 2020 & MSCA §§ 75-71-501 et. seq.): The Panel finds that there is no basis for liability against Respondent SSN.
4. Know your customer (FINRA Rule 2090): The Panel finds that there is no basis for liability against Respondent SSN.

Damages: The Panel awards compensatory damages in favor of the Claimants and against Respondent SSN, in the amount of \$22,606.57. The Panel awards \$0.00 in exemplary damages and \$0.00 in attorneys' fees and expenses.

Claimants' Claims against Gary Spooner ("Spooner")

1. Suitability (FINRA Rule 2310)
 - a. Purchase of four Prudential Annuities (2 Advanced Series XTra Credit Six & 2, APEX II): Claim withdrawn with prejudice at start of hearing;
 - b. Sale of the four Prudential Annuities: The Panel finds that the recommendation to sell these annuities violated FINRA Rule 2310 and

- that Respondent Spooner is liable for the damages occasioned by this recommendation;
- c. Recommendation to purchase Equity Indexed Annuities from AVIVA with the proceeds from the liquidation of the Prudential annuities: The Panel finds that this recommendation did not involve the sale of securities and, therefore, FINRA Rule 2310 does not apply; and,
 - d. Recommendation to convert a whole life policy to a new John Hancock policy: Claim withdrawn with prejudice implicitly by the failure to offer any proof on this issue during the hearing
2. Fraud (FINRA Rule 2020 & Mississippi Code Annotated ("MSCA") §§ 75-71-501 et. seq.): The Panel finds that there is no basis for liability against Spooner under FINRA Rule 2020. However, the Panel also finds that the recommendation to purchase the AVIVA annuities was fraudulent and Respondent Spooner is liable for damages resulting from this.
3. Know your customer (FINRA Rule 2090): The Panel finds that there is no basis for liability against Spooner.

Damages: The Panel awards compensatory damages, exemplary damages, attorneys' fees and expenses in favor of the Claimants and against Respondent Spooner as follows:

- a. Compensatory damages in the amount of \$22,606.57;
- b. Compensatory damages in the amount of \$34,017.00;
- c. Exemplary damages in the amount of \$136,093.00 pursuant to a finding of fraud under MSCA §§ 75-71-501 et. seq.; and
- d. Attorneys' Fees in the amount of \$77,086.63 and expenses in the amount of \$15,946.74 pursuant to MSCA §§ 75-71-509(f).

Respondent SSN's claims against Respondent Spooner

The Panel determines that Respondent Spooner is obligated to indemnify Respondent SSN for its losses and makes an award against Respondent Spooner in favor of Respondent SSN for \$22,606.57 in compensatory damages plus SSN's attorneys' fees and expenses incurred in defending against Claimants' claims pursuant to the executed Registered Representative Agreement in an amount to be determined by a court of competent jurisdiction.

Other Findings

Respondents are found jointly and severally liable and shall pay to Claimants the amount of \$300.00 representing reimbursement of the non-refundable portion of the claim filing fee previously paid by Claimants to FINRA Dispute Resolution.

Any and all relief not specifically addressed herein, including Respondent SSN's

request for punitive damages, is denied.

FEES

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

Filing Fees

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

Initial Claim Filing Fee	= \$ 1,425.00
Cross Claim Filing fee	= \$ 2,125.00

**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 and a member firm, Respondent SSN 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:

March 25 – 28, 2013, adjournment by Respondent SSN = \$ 1,125.00

The Panel has assessed the total adjournment fee in the amount of \$1,125.00 to Respondent SSN.

Discovery-Related Motion Fees

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

Two (2) Decisions on discovery-related motions on the papers
with (1) one arbitrator @ \$200.00 = \$400.00
Claimant submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees = \$400.00

The Panel has assessed the total discovery-related motion fees in the amount of \$400.00 jointly and severally to Respondents.

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 a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: February 18, 2013 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$3,375.00
Pre-hearing conferences: June 28, 2012 1 session
March 15, 2013 1 session
June 14, 2013 1 session

Eight (8) Hearing sessions @ \$1,125.00/session = \$9,000.00
Hearing Dates: June 24, 2013 2 sessions
June 25, 2013 2 sessions
June 26, 2013 3 sessions
June 27, 2013 1 session

Total Hearing Session Fees = \$12,825.00

The Panel has assessed the total hearing session fees in the amount of \$12,825.00 jointly and severally to Respondents.

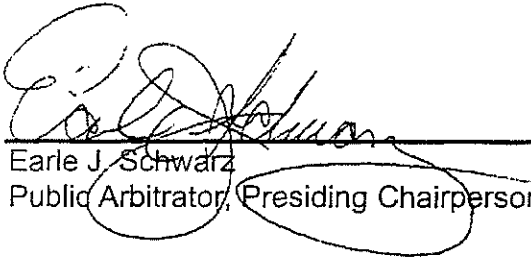
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Earle J. Schwarz	-	Public Arbitrator, Presiding Chairperson
Leigh Ann Roberts	-	Public Arbitrator
Kenneth W. Shelley	-	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



Earle J. Schwarz
Public Arbitrator, Presiding Chairperson

July 8, 2013

Signature Date

Leigh Ann Roberts
Public Arbitrator

Signature Date

Kenneth W. Shelley
Non-Public Arbitrator

Signature Date

July 9, 2013
Date of Service (For FINRA Dispute Resolution office use only)

ARBITRATION PANEL

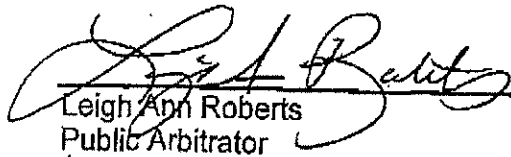
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Leigh Ann Roberts	-	Public Arbitrator
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Concurring Arbitrators' Signatures

Earle J. Schwarz
Public Arbitrator, Presiding Chairperson

Signature Date



Leigh Ann Roberts
Public Arbitrator

7/8/2013
Signature Date

Kenneth W. Shelley
Non-Public Arbitrator

Signature Date

July 9, 2013
Date of Service (For FINRA Dispute Resolution office use only)

ARBITRATION PANEL

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Concurring Arbitrators' Signatures

Earle J. Schwarz
Public Arbitrator, Presiding Chairperson

Signature Date

Leigh Ann Roberts
Public Arbitrator

Signature Date



Kenneth W. Shelley
Non-Public Arbitrator

7-8-2013
Signature Date

7/9/2013
Date of Service (For FINRA Dispute Resolution office use only)